SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 36

UNITED STATES, APPELLANT

vs.

FIRST NATIONAL BANK AND TRUST COMPANY OF LEXINGTON, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY

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Farmers Bank & Capital Trust Company, Frankfort, Ky.		
The State National Bank of Frankfort, Frankfort, Ky.		

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128. "Financing Small Business," Report to the Committees on Banking and Currency and the Select Committees on Small Business, United States Congress by the Federal Reserve System, 85th Cong. 2d Sess. (April 11, 1958) (excerpts)	1229	933
"Problems of Small Business-Financing," H. Rept. No. 1889, 85th Cong. 2d Sess. (1958) (excerpts)	1230	934
"Problems of Small Business-Financing," Hearings before the Select Committee on Small Business, Part I, 85th Cong. 1st Sess. (excerpts)	1231	935
129. Application for Approval To Consolidate Submitted by First National and Security Trust to the Comptroller of the Currency, dated December 1, 1960 with exhibits	1232	936

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131. Regulation of Bank Mergers, Report of the Committee on Banking and Currency Together with Supplemental Views. To Accompany S. 1062 [omitted in printing]	1307	1006
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34. Comparison of loans, deposits, and capital of all Lexington banks on year end dates with ratio	1353	1049
35. Comparison of dollar amounts and percentages of all Lexington banks per published statements for years ended December 31, 1960, and 1961	1357	1053
36. Comparison of Installment Loans at year end dates since beginning business	1360	1056
37. Earnings, expenses, and profits of insured commerical banks by selected size classification, 1954–1960	1361	1057
38. Chart showing total assets of each Lexington bank and percentage of total assets of all Lexington banks held by each bank from 1928 through 1960	1362	facing 1058
39. Employment of resources and liabilities of all Lexington banks per year end call reports 1960	1363	facing 1058
40. 55 pictures of banks and banking offices in Fayette County, Kentucky	1367	1059
56. Table showing proportion of earnings of Trust Department of First National and Security Trust Company derived from corporate trust business and from individual trust business for years 1959–1961	1383	1075
57. Table showing dollar volume and percentage of total dollar volume of other installment loans for personal expenditures held by commercial banks in Fayette County, Kentucky, as of December 31, 1960	1384	1076

Record from the United States District Court, etc.—Con.	Original	Print
Defendant exhibits—Continued		
58. Employment of resources and liabilities of all banks (United States—States and other areas) per F.D.I.C. Report No. 54 dated December 31, 1960	1385	1077
59. Table showing location of borrowers and number and percentage of total of direct and indirect loans of certain types of installment loans of First National outstanding as of August 15, 1961	1386	1078
60. Distribution of assets of private financial institutions 1900, 1929, 1945 and 1958 for United States	1388	1080
61. Table showing dollar value of time and savings deposits of Lexington banks and savings or share accounts of Lexington Building and Savings and Loan Associations as of 6/30/61 and percentage of total held by each	1389	1081
62. Table showing dollar volume and percentage of real estate mortgage loans of each listed lending agency for the year June 1, 1960 to May 31, 1961, in Fayette County, Kentucky	1390	1082
63. Table showing dollar volume and percentage of chattel mortgage loans of each listed lending agency for the year July 1, 1959 to June 30, 1960 in Fayette County, Kentucky	1391	1083
64. List of cities in United States with population of 50,000 to 250,000 with number of banks with head offices (not including any branch offices of any banks) in each city and number of persons per such bank in each city indicated	1392	1084
65. Comparison of savings held by selected media	1397	1089
66. Table showing dollar volume and percentage of total dollar volume of loans to individuals to purchase private automobiles held by commercial banks and other lending agencies in Fayette County, Kentucky, as of December 31, 1960	1398	1090
67. Table showing dollar value of time and savings accounts of Lexington banks and savings or share accounts of other institutions in Fayette County and percentage of total held by each as of 12/31/60 unless otherwise indicated	1399	1091
68. Table showing dollar volume and percentage of total dollar volume of real estate loans secured by mortgages on residences and insured by FHA or VA held by commercial banks and other lending agencies in Fayette County, Kentucky, as of December 31, 1960	1401	1093

Record from the United States District Court, etc.—Con.	Original	Print
Defendant exhibits—Continued		
69. Table showing dollar volume and percentage of total dollar volume of real estate loans secured by mortgages on residences (both insured and uninsured by FHA or VA) held by commercial banks and other lending agencies in Fayette County, Kentucky, as of December 31, 1960	1402	1094
70. Table showing dollar volume and percentage of total dollar volume of loans to farmers, secured and unsecured except loans secured by real estate held by commercial banks and other lending agencies in Fayette County, Kentucky, as of December 31, 1960	1404	1096
71. Table showing dollar volume and percentage of total dollar volume of real estate loans secured by mortgages on farms held by commercial banks and other lending agencies in Fayette County, Kentucky, as of December 31, 1960	1405	1097
72. Mortgage debt on non-farm homes, by type of lender (in millions of dollars)	1406	1098
73. Comparison of commercial growth in Lexington and Fayette County with growth of commercial banks from 1954 to 1958	1407	1099
74. Survey of probate records of Fayette County Court as to number of court appointments and dollar volume of all estates that were administered by banks and by individuals each year, together with percentages as to each for the years 1940 through 1961	1408	1100
75. Survey of probate records of Fayette County Court as to number of court appointments and dollar volume of estates at $10,000 or more that were administered by banks and individuals each year, together with percentages as to each of the years 1940 through 1961	1410	1102
76. Table showing growth in total assets of State Banks in Kentucky as compared with growth of State Building and Loan Associations in Kentucky from 1950 to 1960	1412	1103
77. Table showing banks upon which rent checks are drawn in payment of rent by tenants of Trust Properties of First National and Security as of 3/1/61	1413	1104
78. Table showing where tenants or lessees of farms operated by Farm Division of Trust Department of First National maintained their checking accounts as of 3/29/61	1415	1106

Record from the United States District Court, etc.—Con.	Original	Print
Defendant exhibits—Continued		
79. Table showing dollar value of time and savings deposits of Lexington Banks and savings or share accounts of Lexington Building and Savings and Loan Associations as of 12/31/61 and percentage of total held by each	1416	1107
80. Table showing Total resources of each bank and percentage of total resources of all banks held by each bank in Chattanooga, Tennessee, at year end for the years 1945 to 1960	1417	1108
81. Table showing Total deposits of each bank and percentage of total deposits of all banks held by each bank in Chattanooga, Tennessee, at year end for the years 1945 to 1960	1418	1109
82. Table showing Total loans of each bank and percentage of total loans of all banks held by each bank in Chattanooga, Tennessee, at year end for the years 1945 to 1960	1419	1110
83–83H. Tables and excerpts from Annual Report of the Federal Deposit Insurance Corporation for the year ended December 31, 1960	1420	1111
84. Excerpts from "Financing Small Business," Report by the Federal Reserve System to the Committees on Banking and Currency and the Select Committee on Small Business, 85th Cong., 2d Sess. (April 11, 1958)	1432	1123
85. Distribution by size of probate bond of total number of fiduciary qualifications in Fayette County Court by Security Trust Company, First National Bank and Trust Company of Lexington and First Security National Bank and Trust Company of Lexington as Guardian, Committee, and Curator for the years 1940–1961, inclusive	1435	1126
86. Distribution of size of probate bond of total number of fiduciary qualifications in Fayette County Court by Security Trust Company, First National Bank and Trust Company of Lexington, and First Security National Bank and Trust Company of Lexington as Executor, Administrator and Administrator W.W.A. for the years 1940–1961, inclusive	1437	1128
87. Distribution by size of probate bond of total number of fiduciary qualifications in Fayette County Court by Security Trust Company, First National Bank and Trust Company of Lexington, and First Security National Bank and Trust Company of Lexington as trustee under will for years 1940–1961, inclusive	1439	1130

Record from the United States District Court, etc.—Con.	Original	Print
Defendant exhibits—Continued		
88. Study made by Office of the Comptroller of the Currency entitled "Comparison of Total Assets of Commercial Banks in Central Reserve and Reserve Cities with all Commercial Banks in the United States and Possessions June 29, 1946 and June 30, 1956"	1441	1132
89. Study made by Office of the Comptroller of the Currency as banking concentration in cities of the United States of over 50,000 population	1498	1189
90. Deposits of Chattanooga, Tennessee, Banks, local deposits (excluding correspondent banks)	1515	facing 1206
91. Graph showing the Percentage of Total Deposits Held	1516	1207
92. Record of qualifications of fiduciaries in Jefferson County Court for the Calendar Years 1945–1960 inclusive	1517	1208
93. Advance Extract from Annual Report to the Congress of The Comptroller of the Currency with certificate thereto	1533	1224
94. Listing by year, 1940 through 1961, inclusive, of individuals qualifying as Executor, Administrator with the will annexed, and Administrator where Fayette County Court required no bond	1537	1228
95. Stipulation as to the holdings of the four largest banks in Louisville, Kentucky, and the three largest banks in Cincinnati, Ohio, with a list of the banks	1538	1229
96. Selected Statistics for Lexington & Fayette County, dated February 20, 1962	1544	1235
97. Listing of Estates Over $5,000, Lexington, Fayette Co., Kentucky, for the years 1939–42, etc.	1545	1236
Stipulation of counsel to correct transcript (omitted in printing)	1551	1242
Opinion, Ford, J.	1553	1244
Judgment	1560	1251
Notice of appeal to the Supreme Court of the United States	1561	1252
Order noting probable jurisdiction	1563	1254

[1] In the United States District Court for the Eastern District of Kentucky at Lexington

Civil No. 1424

UNITED STATES OF AMERICA, PLAINTIFF

v.

FIRST NATIONAL BANK AND TRUST COMPANY OF LEXINGTON AND SECURITY TRUST COMPANY, DEFENDANTS

Complaint—Filed March 1, 1961

(File endorsement omitted)

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendants and complains and alleges as follows:

I. JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted against the above-named defendants under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, 15 U.S.C. 4, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, in order to prevent and restrain continued violations by the defendants, as hereinafter alleged, of Sections 1 and 2 of the Sherman Act, 15 U.S.C. 1 and 2.

2. Each of the defendants has its principal place of business, transacts business, and is found within the Eastern District of Kentucky, and the alleged violations hereinafter described are being executed, carried out, and made effective within said District and within the jurisdiction of this Court.

[2] II. THE DEFENDANTS

3. First National Bank and Trust Company of Lexington, hereinafter referred to as "First National," is made a defendant herein. It is a national banking association organized under the laws of the United States, having its principal place of business at Lexington, Kentucky.

4. Security Trust Company, hereinafter referred to as "Security," is made a defendant herein. It is a state bank organized under the laws of the State of Kentucky, having its principal place of business also at Lexington, Kentucky.

III. TRADE AND COMMERCE

5. Commercial banking is an essential part of the nation's economy. Commercial banks perform a unique combination of financial services. These include the acceptance of demand and time deposits from individuals, partnerships, corporations and governmental agencies; the making of loans of various types including industrial and commercial loans, real estate loans, loans for carrying securities and loans to individuals, and the maintenance of facilities for handling and servicing safe deposit, investment, trust, foreign trade and other requirements of their customers. Commercial banks are located in and transact business in every state of the Union.

6. The defendants are commercial banks operating primarily within the metropolitan area of Lexington, Kentucky (hereinafter "Lexington area"). Each is a member of the Federal Reserve System, is insured with the Federal Deposit Insurance Corporation, is a member of an interstate clearing house system, and regularly uses interstate communications, such as the mails, telephone and telegraph, to conduct its banking business with customers, and with other banks, persons or firms, located [3] outside the State of Kentucky. Each defendant receives a substantial amount of deposits from states other than the state in which it is located, and makes a substantial amount of loans to customers in such other states. Each defendant is engaged in interstate commerce.

7. Defendant First National has been, for many years, the largest of the commercial banks in the Lexington area. It was organized in 1929 as a consolidation of the Phoenix Na-

tional Bank & Trust Company and the First & City National Bank, both of Lexington. In 1931, it assumed control and management of the Fayette National Bank and all assets of both banks were transferred to First National in 1933.

8. As of October 3, 1960, First National had total assets of $59,577,000, total deposits of $53,175,000 and total loans and discounts of $32,989,000, which accounted for approximately 41% of the dollar value of all assets among commercial banks located in the Lexington area, for some 40% of the dollar volume of all deposits and about 40% of the dollar volume of all loans and discounts among such banks. In addition it handled trust accounts amounting to $28,034,000 which was approximately 42% of the dollar value of all trust accounts held by commercial banks in the area.

9. Security is the fourth largest bank in the Lexington area. It was incorporated in 1886 as the Security Trust & Safety Vault Company. In 1892 it merged with the Fayette Safety Vault & Trust Company and in 1907 adopted its present title of Security Trust Company.

10. As of October 3, 1960, Security had total assets of $20,767,000, had total deposits of $15,237,000, and had total loans and discounts of $12,343,000, which accounted for approximately 13% of the dollar volume of all assets among commercial banks in the Lexington area, for some 12% of all deposits and 15% of all loans and discounts as among such banks. In addition, Security handled $34,466,000 of trust accounts which gave it approximately 52% of the dollar value of trust [4] accounts among commercial banks located in the area.

11. Both First National and Security perform most, if not all, types of commercial banking activities, and each competes directly and actively with the other, and with other banks in the Lexington area, in the performance of such activities.

12. There are four other commercial banks competing with the defendants in the Lexington area. Citizens Union National Bank and Trust Company accounts for around 17% of the dollar volume of deposits and loans and discounts among all commercial banks. The Bank of Commerce accounts for about 14%, Second National Bank and Trust Company accounts for some 8%, and the Central Bank

accounts for 7%, of the dollar volume of such deposits and loans and discounts in the area. With respect to trust accounts only the Citizens Union National Bank and Trust Company provides any competition for the defendants in that it accounts for approximately 4% of the dollar value of such accounts among the Lexington commercial banks.

13. The metropolitan Lexington area is the second largest urban area in the State and is considered the educational, agricultural and commercial center of central Kentucky. It is one of the largest loose leaf tobacco and blue grass seed markets in the country and the chief center for the breeding of thoroughbred, standardbred and saddle horses, as well as the home of the University of Kentucky, and large state and federal medical centers. Its metropolitan population runs over 135,000, an increase of some 40% in the past ten years. It is an area which is experiencing a rapid growth in population and commerce, and is attracting national attention because of its economic, climatic and transportation advantages. Already, large national concerns have established properties in the area. In 1958 total retail sales for metropolitan Lexington were over $170 million. Wholesale trade sales were over $200 million and total payroll for this community was over $60 million. The metropolitan Lexington area is a substantial business [5] community which is rapidly increasing in size and importance.

14. On December 1, 1960, the defendants submitted an application to the Comptroller of the Currency to consolidate under the charter of defendant First National and with the title First Security National Bank and Trust Company of Lexington. On or about December 3, 1960, the defendants entered into an "Agreement of Consolidation and Plan of Reorganization," which agreement was subsequently approved by the respective Boards of Directors of each defendant. Such application to consolidate, if approved by the Comptroller of the Currency, and such Agreement of Consolidation and Plan of Reorganization, if carried out and put into effect by the defendants, will result in the consolidation of the defendants in a new banking association to be known as the First Security National Bank and Trust Company of Lexington, thereby eliminating all competition between the defendants.

V. Offenses Charged

15. Beginning sometime prior to December 1, 1960, and continuing thereafter up to and including the date of the filing of this complaint, defendants First National and Security have been engaged in an unlawful combination in restraint of and to monopolize, and have attempted to monopolize, the above-described interstate trade and commerce in violation of Sections 1 and 2 of the Sherman Act. Said unlawful combination, and attempt to monopolize, are continuing and may continue unless the relief hereinafter prayed for is granted.

16. The above described offenses have consisted of a continuing agreement, understanding and concert of action between the defendants First National and Security, the substantial terms of which have been and are:

[6] (a) To consolidate and combine all the assets, operations and services of defendant banks into a single banking association thereby eliminating all competition between said defendant banks;

(b) To acquire control of over 53 percent of the dollar value of all assets among commercial banks in the Lexington area;

(c) To acquire control of over 52 percent of the dollar volume of all deposits in, and about 55 percent of the dollar volume of all loans made by commercial banks in the Lexington area;

(d) To acquire control of over 94 percent of the dollar value of all trust accounts handled by such commercial banks;

(e) To obtain a size which will be approximately three times that of the next largest competitive commercial bank, and some four to five times that of each of the remaining competitive commercial banks in the Lexington area.

VI. Effects

17. The aforesaid offenses charged in paragraphs 15 and 16 of this complaint, if continued and carried out, will have, among other things, the following effects:

(a) Actual and potential competition between the defendants will be eliminated;

(b) The defendants will obtain a monopoly of trust accounts handled by commercial banks in the Lexington area;

(c) The defendants will obtain a substantial competitive advantage over all other commercial banks in the Lexington area to the detriment of competition in commercial banking in said area;

(d) Competition in commercial banking in the Lexington area will be suppressed and interstate trade and commerce in commercial banking will be unreasonably restrained.

[7] PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that the defendants have unreasonably restrained, unlawfully combined to monopolize, and have attempted to monopolize interstate trade and commerce in commercial banking in the Lexington area in violation of Sections 1 and 2 of the Sherman Act.

2. That defendants First National and Security and all persons acting on their behalf be enjoined from carrying out an agreement of consolidation and plan of reorganization or any similar plan or agreement the effect of which would merge or consolidate said defendants.

3. That a preliminary injunction issue against the defendants First National and Security preventing and restraining them from taking any action in furtherance of said agreement of consolidation and plan of reorganization or any similar plan or agreement pending adjudication of the merits of this complaint.

4. That plaintiff have such other and further relief as the Court may deem just and proper.

5. That the plaintiff recover its taxable costs.

/s/ ROBERT F. KENNEDY,
Attorney General.

/s/ E. WINSLOW TURNER,
Attorney, Department of Justice.

/s/ W. WALLACE KIRKPATRICK,
Acting Assistant Attorney General.

/s/ GEORGE D. REYCRAFT,
Attorney, Department of Justice.

[8] In the United States District Court for the Eastern District of Kentucky at Lexington

Civil No. 1424

[Title omitted]

Verification of Complaint

DISTRICT OF COLUMBIA, ss:

E. WINSLOW TURNER, being first duly sworn, deposes and says:

That he is an attorney for the United States Department of Justice; that he was actively engaged in the preparation of the foregoing complaint and in the securing and gathering of information upon which this proceeding is based; that he has read the foregoing complaint and knows the contents and is familiar with the subject matter thereof; and that the allegations therein contained are true on his information and belief.

That the sources of his information consist of data, documents and statements supplied by the defendants, by representatives of other Lexington banks, and by others, to the Comptroller of the Currency and to the Department of Justice; financial statements published in *Moody's Bank & Finance Manual*, 1960 Edition, and *Polk's Bank Directory*, 131st Edition; U.S. Bureau of Census reports; and recognized commercial and trade publications containing economic information with respect to the Lexington and the Fayette County areas.

E. Winslow Turner

E. WINSLOW TURNER.

Subscribed and sworn to before me this 28 day of Feb., 1961.

[SEAL] SARA B. MCGRANN,
Notary Public.

My Commission expires May 1, 1961.

[10] In the United States District Court for the Eastern District of Kentucky at Lexington

Civil No. 1424

[Title omitted]

Motion for Preliminary Injunction—Filed March 2, 1961

Comes now the United States of America, by E. Winslow Turner, Attorney, Department of Justice, and moves the Court for the entry of an Order, upon notice to the parties and appropriate hearing, pending final determination on the merits of the Complaint in this case, enjoining and restraining the defendants from taking any action in furtherance of the agreement on the grounds that:

1. The verified Complaint attached to this Motion establishes a prima facie violation of Sections 1 and 2 of the Sherman Act;

2. The issuance of the proposed Preliminary Injunction is necessary to prevent the consummation of the defendants' consolidation alleged to be illegal pending final determination of the merits of the Complaint.

/s/ E. WINSLOW TURNER,
Attorney, Department of Justice.

MARCH 2, 1961.

[File endorsement omitted]

[11] In the United States District Court for the Eastern District of Kentucky at Lexington

Civil No. 1424

[Title omitted]

[File endorsement omitted]

Notice of Motion for Preliminary Injunction—Filed March 2, 1961

To: FIRST NATIONAL BANK & TRUST COMPANY
Lexington, Kentucky
SECURITY TRUST COMPANY
Lexington, Kentucky

Please take notice that the Motion for a Preliminary Injunction filed by the plaintiff, United States of America, on March 1, 1961, and attached hereto, will come on for hearing before Honorable H. Church Ford, Judge, United States District Court for the Eastern District of Kentucky, at the U.S. Court Room, Lexington, Kentucky, on Friday, March 10, 1961, at 9:00 A.M., Eastern Standard Time, or as soon thereafter as the same can be heard in the orderly proceedings of the Court.

/s/ E. WINSLOW TURNER,
Attorney, Department of Justice.

MARCH 2, 1961.

[13] In the United States District Court for the Eastern District of Kentucky at Lexington

Civil No. 1424

[Title omitted]

[File endorsement omitted]

Motion for Temporary Restraining Order—Filed March 2, 1961

Comes now the United States of America by E. Winslow Turner, Attorney, Department of Justice, and moves the Court for an Order temporarily restraining the defendants, First National Bank and Trust Company of Lexington and Security

Trust Company, from taking any action in furtherance of an agreement of consolidation referred to in the Complaint filed herein, and in support of said Motion respectfully represents the following:

1. That the plaintiff has filed a verified Complaint alleging that the proposed consolidation and combination of the assets, operations and services of the defendant banks into a single banking association will violate Sections 1 and 2 of the Sherman Act.

2. That defendants have entered into an agreement of consolidation and plan of reorganization which agreement and plan has been approved by the Boards of Directors and by the stockholders of each defendant.

3. That defendants have made an application to consolidate to the Comptroller of the Currency pursuant to Public Law 86-463 (74 Stat. 129) and that the Comptroller has approved such consolidation.

[14] 4. That after such approval by the Comptroller, defendants have proceeded to take immediate actions to effectuate the consummation of this consolidation as soon as possible.

5. That plaintiff has filed this date a Motion requesting the Court upon notice to parties and appropriate hearing, to issue a preliminary order enjoining defendants from proceeding with the consolidation alleged to be illegal.

6. That defendants may complete the consummation of their consolidation before said Motion for Preliminary Injunction may be heard and determined.

7. That Rule 65(b) of the Rules of Civil Procedure for the United States District Courts, as amended, authorizes the Court in its discretion to make such temporary restraining order or prohibition as may be just in the premises.

/s/ E. WINSLOW TURNER,
Attorney, Department of Justice.

MARCH 2, 1961.

[15] In the United States District Court for the Eastern District of Kentucky at Lexington

Civil No. 1424

[Title omitted]

[File endorsement omitted]

Affidavit of E. Winslow Turner in Support of Plaintiff's Motion for a Temporary Restraining Order—Filed March 2, 1961

E. Winslow Turner, being first duly sworn states as follows:

1. That he is a duly appointed attorney, employed by the United States Department of Justice and currently in charge of the above captioned case for trial, and that he is submitting this Affidavit in support of plaintiff's Motion for a Temporary Restraining Order enjoining defendants, First National Bank and Trust Company of Lexington and Security Trust Company, from taking any action in furtherance of an agreement of consolidation and plan of re-organization as between such banks.

2. That the Complaint in this case was filed on March 1, 1961 and charges defendants with an unlawful combination in restraint of, and to monopolize, and attempts to monopolize, interstate trade and commerce in violation of Sections 1 and 2 of the Sherman Act.

3. That such combination is alleged to eliminate all competition as between said banks and to effectuate for them a control of over 53 percent of the dollar volume of all assets, over 52 percent of the dollar volume of all deposits, about 55 percent of the dollar volume of all loans and over 94 percent of the dollar volume of all trust accounts, as among commercial banks located in the Lexington Metropolitan area.

4. That the Complaint further charges that this combination and consolidation will unreasonably restrain interstate trade and commerce in commercial banking, and will give defendants a substantial competitive advantage over all other commercial banks in the Lexington area to the detriment of competition. [16] In addition, it is alleged that defendants will obtain a monopoly of trust accounts handled by banks in this area.

5. That the Complaint prays that the aforesaid consolidation be adjudged to be a violation of Sections 1 and 2 of the Sherman Act and prays that a preliminary injunction be issued against the defendants preventing and restraining them from taking any action in furtherance of their agreement or any similar plan pending final adjudication of the merits of this Complaint.

6. That the purpose of this action is to prevent a substantial elimination of effective and necessary banking competition and equally to prevent an increase in economic power by an already dominant bank, First National Bank and Trust Company of Lexington, in a concentrated banking service area such as Lexington, which increased power may lead rapidly to monopoly controls and may cause remaining banks to merge, or to go out of business.

7. That on or about December 3, 1960, the defendants entered into an "Agreement of Consolidation and Plan of Reorganization" which agreement provided for the consolidation and combination of all assets, operations and services of the defendant banks into a single banking association; such consolidation to be put into effect as soon as approval had been received from the stockholders of said banks and from the Comptroller of the Currency, and that such approval was voted by the stockholders of the respective banks on or about January 11, 1961, and approval was granted by the Comptroller of the Currency on or about February 24, 1961.

8. That the Department of Justice now has information to the effect that defendant banks have elected officers and directors of the new banking association and have effectuated plans directed to the commingling of accounts and properties and to the combining of banking operations, pursuant to, and in furtherance of, the consolidation agreement, and have consummated this part of the consolidation to the extent of notice to the public.

9. That such action may result in an immediate physical consolidation of the properties and funds of these banks to a degree that it would be difficult if not impossible, to effectively enforce a preliminary injunction if one is ordered, or to remedy the charged violation.

[17] 10. That it is believed to be extremely important that pending final determination of the merits of the Complaint that the present status quo of the First National Bank and Trust Company of Lexington and Security Trust Company be maintained in order to continue effective banking competition in the Lexington area until such time as this matter can be finally decided; and that in order to avoid complex problems of divestiture which may arise if the defendant banks are allowed to combine, and thereafter plaintiff's prayer for relief is granted, an immediate restraining order and injunction against such consolidation should be granted.

11. That additional affidavits in support of the plaintiff's Motion for a Temporary Restraining Order will be filed within forty-eight hours of the filing of such motion.

/s/ E. WINSLOW TURNER,
Attorney, Department of Justice.

Subscribed and sworn to before me this 2nd day of March, 1961, by E. Winslow Turner.

[SEAL] ROSE N. AMBURGEY,
Notary Public, Fayette County, Kentucky.

My commission expires August 13, 1964.

[18] In the United States District Court for the Eastern District of Kentucky at Lexington

Civil No. 1424

[Title omitted]

[File endorsement omitted]

Affidavit of Ernest S. Clarke in Support of Motion for a Temporary Restraining Order—Filed March 2, 1961

Affiant, Ernest S. Clarke, after being first duly cautioned and sworn, deposes, and upon personal knowledge, information and belief, states:

I am Ernest S. Clarke. I am President of the Citizens Union National Bank and Trust Company of Lexington, Kentucky. I became President of it on or about December 31, 1954. Prior to that date, from April 1, 1946, I was President of the Union

Bank and Trust Company of Lexington which merged with the Citizens Bank and Trust Company on December 31, 1954. Prior to April 1, 1946, I was a Vice-President of the Liberty National Bank and Trust Company of Louisville, Kentucky, with which bank I became connected in September of 1933. So, I have been intimately connected with the banking business for more than 27 years. I graduated from Frankfort High School in 1925. I graduated from Washington and Lee University, Lexington, Virginia, in 1928. I worked in an investment trust in New York City after graduation until 1931. I was with the Louisville Local Branch of the Reconstruction Finance Corporation, after several months of being out of a job, until my connection with the Liberty National Bank and Trust Company.

On December 31, 1954, the Citizens Bank and Trust Company and the Union Bank and Trust Company closed their books as they did on any other normal business day. As soon as these books were closed the staff of the two banks intermingled their loans and discounts, and deposit accounts, both checking and savings, their trust accounts, and their general books, cash, clearings and all other assets. On the next business day, at or about 8:30 A.M., there was a meeting of the new board of the combined banks composed of the former directors of the two banks in accordance with the terms of the merger agreement. This [19] Board elected officers and opened for business at 9:00 o'clock A.M., as the new bank. In my opinion from that hour on all deposits made, new loans made, notes renewed, trust business transacted and transactions in existing trust accounts, and all other business then became the property and possession of the new bank. In my opinion it would be most difficult to identify any of these transactions as possibly belonging to either of the merged banks in the event it became necessary to separate the two institutions.

I am very much concerned over the merger between the First National Bank and Trust Company and the Security Trust Company, of Lexington, because of the possible adverse effects I feel it may have on the Citizens Union National Bank and Trust Company and the community in general. The Union Bank and Trust Company merged with the Citizens Bank for

the primary reason of being better able to more effectively compete with the largest bank in town for national accounts. Lexington, like most other comparable communities, has had a considerable influx in the past 15 years of new businesses controlled outside of Lexington as well as some conversion of locally controlled business to outside control, and it is my considered opinion that officers of large corporations in distant cities without intimate knowledge of the banking and business conditions in a town such as Lexington prefer to do business with the largest institution in the town. The merger will create an institution controlling approximately 53% of the deposits, 50% of the loans and 62% of the capital funds in Fayette County. Although authentic information as to the trust business is not available to me, it is estimated that it would control 90% of the trust business of Fayette County. I think that our bank would be very adversely affected and be at a considerable disadvantage in attempting to obtain certain types of new business when such a tremendous percentage of the banking business of our community is controlled by one institution.

Our bank has been confronted with an almost unsurmountable obstacle in the past in attempting to obtain business from firms which are tenants of the Trust Departments of these two institutions separately and if this merger is consummated it will be, in my opinion, even more difficult for us to obtain such [20] business. I do not know the percentage of the business property of the down town area which will be controlled by this institution but it is a large percentage. The office space alone in the two buildings occupied by the two banks available for lease to tenants constitutes a substantial percentage of the office space in the down town area.

I believe one of the principal reasons advanced for the present merger is that the resulting bank will be better able to meet the financial requirements of the business community. The First National now has a legal limit of $250,000. to any one customer and the Security Trust has $440,000. on an unsecured basis, and $660,000. on a secured basis, or a combined lending limit on an unsecured basis of $690,000. and $910,000. on a secured basis. It is my understanding that the proposed capital

and surplus of the consolidated bank is to be $5,000,000. in which event the legal limit will be $500,000. or a reduction of $190,000. on an unsecured basis and $410,000. on a secured basis. I believe that the needs of the community are now being adequately met by the existent banks.

When our bank converted from a state bank in 1958, we relinquished a legal lending limit of $400,000. and accepted as a national bank a limit of $200,000., or a reduction of 50%. In the opinion of our board of directors this reduction was not a handicap in operating a bank in Lexington, nor would such a limit prevent our properly serving the needs of our existing or prospective borrowers.

It is my belief that the merger has already been or is presently being effected.

/s/ ERNEST S. CLARKE.

Subscribed and sworn to before me this 1st day of March, 1961, by Ernest S. Clarke.

[SEAL] ROSE N. AMBURGEY,
Notary Public, Fayette County, Kentucky.

My commission expires August 13, 1964.

[21] In the United States District Court for the Eastern District of Kentucky at Lexington

Civil No. 1424

[Title omitted]

[File endorsement omitted]

Affidavit of Robert C. Stilz in Support of Plaintiff's Motion for a Temporary Restraining Order—Filed March 2, 1961

The affiant, Robert C. Stilz, after being first duly cautioned and sworn, deposes, and upon direct knowledge, information and belief states:

My name is Robert C. Stilz. I am the President of the Bank of Commerce of Lexington, Kentucky, and have been such since 1955. I have been employed by the Bank of Commerce for a period of fourteen years as an executive officer. I have resided in Lexington, Fayette County, Kentucky, all of my life. I

attended the University of Kentucky, graduating with the degree of BS in Commerce from the College of Commerce and with the degree of LLB in Law in 1940. I was actively engaged in the practice of law from this time until 1947, at which time I was elected an Executive Officer and Director of the Bank of Commerce of Lexington, Kentucky, and have been engaged as such up to the present time.

It is my opinion that if the merger of the First National Bank and Trust Company of Lexington, Kentucky, and the Security Trust Company of Lexington, Kentucky, should proceed and be actually consummated that as a practical matter it would entail great difficulty should said merger be set aside by any action or actions to untangle the consolidation of various bank accounts, notes, trust accounts and corporate stocks issued by the emerging bank.

[22] In my opinion, the merger of these two banks would work a very definite and serious hardship not only on the bank which I represent but on the other banks in this community by placing them at a very definite disadvantage competitionwise, in the following ways:

It is the general practice of large industries or businesses, when coming into a new area, to consult merely balance sheet figures in ascertaining where to open their local bank accounts and the mere fact that the emerging bank in this instance would show approximately 53% of the commercial deposits in this area would in itself be a great influence on where a new industry or company would decide to do its local banking. This plus the fact that individuals moving into a new community are greatly influenced by bigness alone would work a severe and serious hardship on the remaining banks in this area. I know from actual experience that the First National Bank through various mergers in the past having acquired approximately 40% of the commercial deposits in this area has made it very difficult for other banks to compete on an even basis in obtaining new business and in my opinion, the resulting bank of this merger having 53% of the commercial deposits would work an even greater hardship on other competing banks.

The many influences that might be exerted through interlocking directorates and the pressures that might be exerted by

this large bank upon individuals and corporations would in my opinion work a severe hardship not only upon the other competing banks but upon this community as a whole. For example, all of the Directors of the only two local newspapers in the area are connected directly as either Directors or Advisory Directors with the emerging bank. It has been by experience in the past that the two merging banks have enjoyed a much more favorable press than my bank and the other remaining banks enjoy. I would expect that this unfair press coverage will be aggravated as a result of this merger. Another example of interlocking directorates is that several of the Directors of the resulting bank are also officers and Directors of one of the largest local Federal Building and Loan Associations, namely, Lexington Federal Savings and Loan Association.

[23] In my opinion, if this merger is allowed to be consummated, the result with respect to properties controlled by the combined trust departments of the two merging banks will be that the emerging bank will control a large percentage of the rentable downtown mercantile property and desirable office space. This result would work a hardship on other competing banks in that new businesses coming into Lexington seeking downtown mercantile space or desirable office space would naturally come in contact first with this bank, which would give it a great advantage in the obtaining of new bank accounts. In addition to this, it could result in a non-competitive setting of downtown rentals which would work a hardship on other landlords and on tenants.

It is difficult for me to conceive of any business in this area, agricultural, industrial, warehouse, horse breeding and those businesses directly connected with many of the above, that could not be adversely affected, either directly or indirectly, by this merger.

In my opinion, the present banks in this area afford very adequate banking facilities required by this community and as a matter of fact, the resulting bank will have a much smaller lending power to any one individual, partnership or corporation than the combined individual lending powers of the two merging institutions. In addition, the lending power of the

resulting bank will be less than the present lending power of the Security Trust Company on a secured basis.

/s/ Robert C. Stilz.

Subscribed and sworn to before me this 2nd day of March, 1961, by Robert C. Stilz.

[seal] Rose Amburgey,
Notary Public, Fayette County, Ky.
My commission expires August 13, 1964.

[24] In the United States District Court for the Eastern District of Kentucky at Lexington

Civil No. 1424

[Title omitted]

[File endorsement omitted]

Affidavit of Joseph C. Graves, Jr., in Support of Plaintiff's Motion for a Temporary Restraining Order—Filed March 2, 1961

I am Joseph C. Graves, Jr. I live at 450 West Second Street, Lexington, Kentucky. I am a stockholder, director and vice-president and treasurer of Graves Cox and Company, a local clothing store at 126 West Main Street, Lexington, Kentucky. I am also a stockholder in the Security Trust Company. I own twenty (20) shares of stock in the Security Trust Company, and various members of the Graves family own, in various capacities, approximately Eighteen Hundred shares of Security Trust Company stock.

I am one of numerous stockholders who have opposed the proposed merger of the Security Trust Company with the First National Bank. I understand that the merger became effective March 1, 1961. I received on March 1, 1961, a letter dated March 1, 1961, from Mr. E. S. Dabney, President of the Security Trust Company, indicating that the banks had already merged or would very shortly do so. This letter is attached to the affidavit. As a stockholder of the Security Trust Company, I had no knowledge of the time in which the consolidation was [25] to be effective until I received the attached

letter. I have been informed that a meeting was held on March 1, 1961, to elect the officers of the new bank and to complete certain steps which might be necessary to effect the consolidation.

I am of the opinion that as a result of this consolidation, a major portion of the business properties of Lexington and its suburban area, as well as a substantial proportion of the more valuable and highly developed farm lands of Fayette County and Central Kentucky would be controlled by the consolidated bank in various fiduciary capacities and by officers and directors of the consolidated bank, individually, as shareholders of various corporations, as partners in various land-holding enterprises, and as agents for other persons. It is my opinion as a local merchant that the consolidation of these banks and the consequent concentration of control of valuable real property will be detrimental to the interests of business tenants, and that it will lessen the competitive offering of business properties for rent or for sale in Lexington and its suburban area.

I and members of my family have an interest in several real estate properties, either as trust beneficiaries or in other capacities in Lexington and other parts of Fayette County. It is my belief that this consolidation will put owners of rental property in Lexington at a serious competitive disadvantage. As an owner of real estate and as a lessor and lessee, I am seriously concerned with the consequence of having a large portion of the real estate in Lexington controlled by Lexington's largest financial institution. I believe that the existence of this circumstance would create an unfair competitive situation which [20] would be a serious disadvantage to me and other real estate owners and lessors and lessees.

As a beneficiary of a trust owning real estate in Fayette County now administered by the Security Trust Company as trustee, I am seriously disturbed that these trusts will now be administered by Lexington's largest bank, which will also be trustee for approximately 90 percent of the corporate trust businesses in Lexington. Through this trust business and through the interests of its officers and directors, the bank and it officers and directors will manage and/or have an interest in a large amount of real estate which is competitive with the

real property in which I have a beneficial interest. This would enlarge the likelihood that there will be a conflict of interest on the part of the merged bank as trustee of the trust in which I am interested and as an institution interested in competitive properties.

It is my understanding that presently the corporation which owns and operates the two local newspapers is held in trust under the will of the former owner of the corporation, and that presently, under terms of that will, the directors of that corporation consist of representatives of both the First National Bank and Trust Company and the Security Trust Company. I further understand that as a result of the consolidation of these two banks, all of the directors of the corporation publishing the two local newspapers will be affiliated with the consolidated bank.

/s/ JOSEPH C. GRAVES, Jr.

Subscribed and sworn to before me this 2nd day of March, 1961, by Joseph C. Graves, Jr.

[SEAL] ROSE N. AMBURGEY,
Notary Public, Fayette County, Ky.

My commission expires August 13, 1964.

[27] In United States District Court for the Eastern District of Kentucky

Attachment to Motion for Temporary Restraining Order—Filed March 2, 1961

[File endorsement omitted]

SECURITY TRUST COMPANY,
ESTABLISHED 1886.
Lexington, Kentucky, March 1, 1961.
(E. S. Dabney, President.)

To Our Customers:

We are pleased to tell you the Comptroller of the Currency, Washington, D.C., has approved the consolidation of this bank and the First National Bank and Trust Company of this city,

effective March 1, 1961, under the new name of First Security National Bank and Trust Company of Lexington.

We will continue to operate at our present location, corner Mill and Short Streets, as Security Trust Branch of the new bank.

All departments of our bank will continue to operate as heretofore, with the same personnel, so we will have available for you the same services heretofore extended.

Please continue to use your present supply of checks drawn on Security Trust Company. They will be processed at Security Trust Branch, the same as heretofore. In good time, of course, we will have available new checks.

It is our earnest wish that the new bank be operated at no inconvenience to our customers, but to their great convenience and benefit. You are at liberty to use all of the branches of the new bank whenever you may find it suitable to your purposes.

Sincerely yours,

E. S. DARNEY, *President.*

[39] In the United States District Court for the Eastern District of Kentucky at Lexington

Civil No. 1424

[Title omitted]

Amended Complaint—Filed March 3, 1967

Comes the plaintiff, United States of America, by E. Winslow Turner, Attorney, Department of Justice, and before Answer herein, amends the Complaint herein by adding the First Security National Bank and Trust Company as a party defendant, for the following reasons, and then reaffirms each and every other allegation of the original Complaint filed herein:

1. The defendants claim that the First National Bank and Trust Company of Lexington and the Security Trust Company of Lexington have merged into the First Security National Bank and Trust Company of Lexington, a separate and distinct banking association.

2. If such merger has taken place the First Security National Bank and Trust Company should be joined as a party to this action.

/s/ E. WINSLOW TURNER,
Attorney, Department of Justice.

[Certificate of service omitted in printing]

[File endorsement omitted]

[40] This is to certify that a copy of the Amended Complaint has been attached to a copy of the original Complaint for service upon the defendant First Security National Bank and Trust Company of Lexington, by the United States Marshal, along with the Summons.

E. Winslow Turner,
E. WINSLOW TURNER.

MARCH 3, 1961.

[41] [CLERK'S NOTE.—The COMPLAINT is omitted from the record here as it appears at pages 1–7 *supra*.]

[56] In the United States District Court for the Eastern District of Kentucky

[File endorsement omitted]

[Title omitted]

Affidavit of Robert Stilz—Filed March 4, 1961

I, Robert Stilz having been duly sworn deposes and says:

I. I am the same Robert Stilz who has given a previous affidavit in this case.

II. The purpose of this affidavit is to explain in detail the basis for my conclusion that should the banks combine their operations, later separation will present difficult problems. The following, I believe are some of the major difficulties:

RECORDS

In the event that the books and records of the two merged banks were combined and no separate records maintains for each bank and in the event the merger were later set aside,

it would present many difficult problems to the bookkeeping departments and also would be confusing to the public, not only with respect to persons dealing with the merged banks but to other businesses relying upon checks, drafts, etc. issued on the merged bank.

SAVINGS ACCOUNTS

Many problems would arise with respect to Savings Accounts and Savings pass books now outstanding and to be issued, namely, if new pass books were issued by the merged bank and later the merger were set aside, not only the depositor but any one extending credit on the basis of the issuance of the new pass book would be placed in a position of not knowing which bank was responsible for the funds evidenced by the pass book. This could be particularly true in the case of a new depositor who had never done business with either of the merged banks and had opened a Savings Account with the merged bank and then later, if the merger were set aside, this new depositor would be more confused as to where his funds were and which bank [57] could be called upon for delivery of his funds.

A very difficult problem would arise in the paying of interest on Savings Accounts, in the event the merger were set aside, as to which bank would be responsible to the customer for interest on the individual accounts. This would be particularly confusing to the depositor that he would not know which bank was responsible to him for his interest.

CHECKING ACCOUNTS

Many of the same problems would arise with Checking Accounts, the same as with Savings Accounts unless separate accounts were maintained by each bank and no co-mingling of accounts between the two banks were permitted. However, the problem again arises when a new customer, unfamiliar with the merger situation, might deposit with the merged bank and if the merger were later set aside, he would not be sure which bank was responsible for his funds and upon which bank he might make proper demands. This could be a continuing problem and difficulty to the customer as long as the legality of the merger was in dispute or until final decision was reached.

in the event the merger were set aside, as to the allocation of new accounts acquired since the merger.

CERTIFICATE OF DEPOSITS

The same confusion and difficulty would result from issuance of new Certificates of Deposits by the merged bank in that the holder of Certificates of Deposits who might be a creditor of the depositor would not know, in the event the merger were set aside, which bank would be responsible for paying the Certificates of Deposits on maturity date and also the interest due thereon.

LOANS

On new loans made with the merged bank, in the event the merger were set aside, it would be difficult to allocate these loans to the individual bank and the borrower would not be in a position to know which bank he was obligated to, or the amount and in the event he wished to pay his loan in order to prevent a default, he would not be sure which bank he should [58] tender his payment.

The same dilemma will be encountered by the designated collecting agent in the interest of a large participation loan by several banks, including the merged bank.

TRUST ACCOUNTS

So many problems could arise in the field of Trust Accounts in the event the trust books were combined in the merged bank and then later, the merger were set aside. One apparent problem would be a testator naming the merged bank as his executor and trustee relying upon certain personnel of the merged bank whose investment views coincide with those of the testator. If the merger were set aside after the death of the testator, the problem of deciding which bank would administer the trust estate could very conceivably end up in the courts and might be granted to one of the merged banks whom the testator did not wish to handle his trust estate because there might be no way of proving which of the merged banks personnel the testator had confidence in. Furthermore, many technical problems would arise with respect to the particulars of various trust accounts in assets held jointly for the benefit of one or more

trust accounts, particularly with respect to stock dividends, ordinary income and taxes. Many legal problems might arise in the event of mismanagement or negligence in the investment of assets held jointly by the merged bank and for the benefit of several trust accounts.

Finally, since Federal Reserve requirements are directly related to the deposits, loans, etc., of each bank, the actual reserve standing of each bank would not be determined except through a complete allocation with respect to the above mentioned items.

IN CONCLUSION, many problems relating directly to the general public and to the individual customer will arise immediately as a result of the merger. Some of these are as follows:

FDIC

It is entirely conceivable that many persons now have accounts in [59] both of the merged banks in the same name up to the amount that is insured by the Federal Deposit Insurance Corporation, namely, $10,000. Under the merged status, such a customer would only be insured up to $10,000 in the merged bank and the merged bank may not be able to get actual notice of the merger to such a depositor and instead of being insured through the FDIC for his total deposit in the two banks, he would only be insured for one-half of his deposit.

LEGAL LIMITS

Many customers of each of the merged banks may run into serious difficulty because the lending limits of the merged bank is much less than the total lending limits of the separate banks. Thus, as a result of the merger, a customer may be required to pay a substantial part of his obligation at an unfavorable time to him or search elsewhere for his borrowing requirements.

In addition, since banking laws do not permit a bank to lend upon its own capital stock as collateral, many borrowers might find themselves in a position, as a result of the merger, to have to pay their loans or provide substitute collateral for same.

PERSONAL LOANS

It is a common practice for banks of this area, with particular respect to tobacco farmers, to extend lines of credit for a period of six months, or less, relying upon the proceeds from the borrowers crop to pay off this loan, and knowing full well that the crop cannot be marketed within the maturity date of the loan, and intending to extending the loan, with payment of interest thereon, on additional time to allow the borrower to market his crop. Most of these loans are made on the basis of a personal relationship between the banker and the individual borrower. As the result of the merger, such borrowers may be forced to pay off their obligation at a time when funds are not readily available to them.

LEXINGTON, KY.

Dated, this the Fourth Day of March, 1961.

Robert Stilz,
ROBERT C. STILZ.

[60] Subscribed and sworn to before me this the Fourth day of March, 1961.

[SEAL] GERTRUDE DELANEY,
Notary Public, Fayette Co., Kentucky.

My commission expires September 13, 1961.

[61] [Certificate of service omitted in printing]

[62] In the United States District Court for the Eastern District of Kentucky at Lexington

Civil No. 1424

[File endorsement omitted]

[Title omitted]

Affidavit of Ernest S. Clarke—Filed March 4, 1961

Affiant, Ernest S. Clarke, after first being duly cautioned and sworn, deposes, and upon personal knowledge, information and belief, states:

I am the same Ernest S. Clarke who gave an affidavit in this action, which affidavit was dated March 1, 1961, and I am making this second affidavit in order to explain in detail what I meant by my statement that it would be difficult to identify the transactions as belonging to either of the merged banks in the event it becomes necessary at a much later date to separate the two institutions.

At the time I made my previous affidavit, it had not come to my attention that the First National and the Security Trust Company had actually merged, and had I known that, I could have been much more specific in my opinion as to what was taking place in their institutions, having been through the same process myself in my own institution.

With respect to savings accounts existing prior to the merger, many persons undoubtedly held several such accounts in each of the merging banks. Deposits made after the merger by such depositors cannot be allocated to one or the other of the two previous banks to properly reflect the depositors' intentions.

I am sure they had, as we had in our merger, a number of savings [63] accounts by the same depositor of approximately $10,000. each, which is the limit set by the Federal Deposit Insurance Corporation for deposit insurance in any one bank. The problem immediately arises as to whether the customer knows that only $10,000. of his deposits is covered by insurance, and even though no additional transaction may take place in

his account, that such account has been automatically consolidated as far as the Federal Deposit Insurance Corporation insurance is concerned, and therefore twenty thousand dollars covered by Federal Deposit Insurance Corporation insurance is now only covered to the extent of $10,000.

Now, what happens to a brand new savings account customer? He has been told by full page advertisements in the newspaper and by many radio announcements that the merger is now in effect, and that he may use any of the merged bank's branches. In my opinion, it would be impossible for the bank to properly allocate this account to either of the previous banks without contacting the customer and determining his intentions.

With respect to checking accounts, the same problems identically present themselves as with savings accounts and differ only to the degree that there are many more transactions in them. The possibility of allocating such accounts would present a gigantic task. For instance, a customer could have a thousand dollar checking account in each bank, and have a thousand dollars worth of bills to pay. Normally he might have paid $500. from each account, but inasmuch as he has been told that the banks have merged, he could very well write them all from one book of checks. There is no way the bank could know his intentions as to which account he wished these checks to be charged, and by charging them to the account according to the name of the check used, would, if the bank's accounts were to be [64], separated, in effect close out his account with one of the banks entirely through no choice of his own.

A new checking account is opened and it is my opinion that the location of its opening in no way truly identifies the desire of the depositor to make a deposit with either of the previous banks, and if the banks are later separated, a statement would have to be obtained from that depositor as to which bank he intended that deposit to go.

Now, what about the depositor of the First National Bank who lives in the north end of the city and passes the Security Trust branch on North Broadway to get to the First National to make his deposits, and has read in the papers of the merger.

It is logical that he could begin making his deposits in the Security Trust branch, and the place of origin of such deposit would have no relation whatsoever as to his intention as to which bank he desired to place his account in the event of any separation.

With respect to notes, there is in my opinion, also present a most difficult problem of identification. A large percentage of our bank's notes is made up of thirty, sixty and ninety day commercial and collateral notes, many of which mature every day. A borrower wishes to renew one of these notes, and if the merged bank's experience is comparable to ours, the borrower will go into the most convenient branch and call the loan officer and ask if he may renew the note at that branch. The point of origin of this transaction would not properly identify which bank made the loan if later it had to be allocated.

The new borrower presents an even more difficult problem. The only way the allocation of his note could be made to one bank or the other would be by contacting that borrower. However, there is the definite possibility that he did not intend to do business with either of the former banks as a separate bank, but with the new combined bank. The same situation goes for [65] participation loans with a city correspondent bank.

With respect to trust accounts, the principal problem, in my opinion, would concern a customer who names the merged bank as executor and/or trustee and dies while the merger is still in effect. He certainly could not be consulted as to which institution he intended to handle his estate, which might run as long as a life and life in being.

Accounts of the merged bank with correspondent banks in other cities, would, in my opinion, present a very difficult problem if it became necessary to separate them. According to Polk's Bank Directory, 132 Edition, both of the former banks had accounts with the following correspondents: Chemical Bank New York Trust Company, First National City Bank and Morgan Guaranty Trust Company in New York, First National Bank, Cincinnati; Citizens Fidelity Bank & Trust Company, First National Lincoln Bank, Liberty National Bank and Trust Company, and the Louisville Trust Company, in

Louisville; and the Mellen National Bank & Trust Company of Pittsburgh. In the normal course of business, these accounts would be merged on the date of the merger and become one in each bank, and I am sure have had many daily transactions since then, both credits and debits. The merged bank's accounts with the Cincinnati branch of the Federal Reserve Bank of Cleveland would, in my opinion, have had to be merged in order to meet the requirements of the Federal Reserve Bank. With respect to country banks, as Lexington banks are classified under the Federal Reserve Act, a member bank must maintain 12% of demand deposits and 5% of time deposits as a reserve to be calculated on a fourteen day period, with a settlement on every other Wednesday. If there is a deficiency in cumulated balances with the Federal Reserve Bank, a bank normally borrows a sufficient amount to make up this deficiency. In the event of a separation of the merged banks, an accurate determination of allocation of demand and time deposits of each bank would have to be furnished to the Federal Reserve Bank in order for it to figure the reserve requirement of each of the banks.

[66] A bank attempts to the best of its ability to keep its surplus funds gainfully employed at all times, even to the extent of selling one day Federal Funds, and normally has many transactions in ninety day U.S. Treasury Bills, and the allocation of assets such as these in the event of separation would have to be completely arbitrary. An absolute impossibility on an equitable basis, even if arbitrary, would be encountered if municipal bonds are purchased by the merged bank, as most of such issues purchased by Lexington banks are of such a nature that it is impossible to determine their actual value without an outright sale.

/s/ ERNEST S. CLARKE.

Subscribed and sworn to before me this 4 day of March, 1961 by Ernest S. Clarke.

[SEAL] HELEN P. WEISSINGER,
Notary Public, Fayette County, Kentucky.

[67] [Certificate of service omitted in printing]

[68] In the United States District Court for the Eastern District of Kentucky at Lexington

[File endorsement omitted]

[Title omitted]

Civil No. 1424

Affidavit of Charles E. Cool—Filed March 4, 1961

Affiant, Charles E. Cool, after being first duly cautioned and sworn, deposes, and upon personal knowledge, information and belief, states:

I am Charles E. Cool, Executive Vice President of Central Bank. I have been employed by the Central Bank in the capacity of Vice President and Director for 11 years. My experience in the credit and banking business dates back to the middle 1930's at which time I was employed by Universal Credit Company in various capacities from a field representative to a regional branch supervisor. During my term of employment with Universal Credit Company, and later with the company with which they merged, namely: Universal CIT Credit Corporation, I was employed in ten different states. My early education was received in the public schools of Columbus, Ohio. I later attended Ohio State University, College of Commerce and Journalism. In addition to the above, I spent approximately four years as regional insurance director and credit supervisor with the War Assets Administration following termination of World War II.

In my opinion, if the merger of the First National Bank and Trust Company of Lexington and the Security Trust Company of Lexington is culminated and all assets of the two banks are combined, such as consolidating all checking accounts, savings accounts, trust accounts, loans, all general books and other assets, it would probably be impossible to [69] separate them in the event said merger was later disapproved by this Court.

After all of the assets of the two above mentioned banks have been merged, which I am assuming has by this time been done, it would be most difficult for them to keep two sets of books in order to separate the transactions for the two banks concerned. I feel certain that they are only keeping one set of books which would make all transactions after the merger much

more difficult to identify and separate in the event the merger was later disapproved by this Court and in fact, it would be almost impossible to identify and separate the transactions.

A few examples of the above difficulties would be as follows:

How would it be decided which bank should have the new accounts opened in the merged bank should the merger be disapproved.

Another example would be the profits made by the combined bank. How would the profits be allocated to the two banks in order to protect the stockholders should the merger be later disapproved.

In the event there should be certain losses on loans or charge-offs and a separation of the merged banks was later necessary, which bank would assume said losses. This would be important to the stockholders.

In the event of recovery on charge-offs or losses from previous years, who would bear the expense of collecting said charge-offs and who would receive the benefit from said.

During the period that the merged banks operated prior to a possible disapproval there would be a great number of depositors who would add and increase their savings and checking accounts. Which bank would be charged with the interest on the savings accounts and how would the profit derived from the loan of such funds be allocated to the two banks.

There are undoubtedly many more ramifications to such a problem as this and no doubt if sufficient time and thought was given to complete consideration of all the problems involved there would be many more [70] objections as to why the banks should not be merged at this time.

It is my further opinion that the said merger or consolidation would be a combination or monopoly in restraint of trade due to the fact that the combined trust assets of the two banks probably would exceed $75,000,000.00. Among those assets is a large number of Main Street properties and other business properties of which the two banks would be the landlord. It is therefore obvious that any tenant who might rent these properties would be required to do business with the consolidated banks in order to obtain the lease.

It is also my opinion that any new manufacturing plant or industry which might desire to locate in central Kentucky would

be more than likely to open an account with the merged bank and be told by said bank that their resources were more than the total of all of the resources of all of the other banks in Lexington combined. It would be an untruth to state that the new merged banks loan limit would be increased because the Security Trust Company loan limit prior to this merger was more than the loan limit of the two combined banks. Ordinarily when an out-of-town company decides where to bank in a new location or city, they refer to the balance sheets of the banks in that city and in most instances, especially in the case of large companies, they select the largest bank. Therefore, through the process of merging, these two banks would be so large that they would obviously receive much more consideration due to their size than any other bank in this City. The same consideration mentioned above pertains to a person selecting a trust company in which to open a trust account. We have applied for trust powers for the Central Bank and have been granted such authority under certain conditions. However, it is doubtful that we would be interested if the above mentioned merger remains in effect.

It is my honest opinion that the banks in Lexington as they now [71] stand, including the First National Bank and Trust Company and the Security Trust Company, prior to their merger, are large enough and adequate to serve the requirements of the business and individuals in the Lexington area.

In my opinion I believe that a holding company could be set up to own all of the stock in both banks leaving the banks free to operate as two separate entities until the problems confronted with the merger can be further studied and explored thereby avoiding the confusion and difficulty which would result if the merger should be disapproved.

/s/ CHARLES E. COOL.

Subscribed and sworn to before me this 3rd day of March, 1961, by Charles E. Cool.

[SEAL] FERNE K. SCOTT,
Notary Public, Fayette County, Ky.

My commission expires Aug. 12, 1962.

[72] [Certificate of service omitted in printing]

• • • • • •

[75] In United States District Court Eastern District of Kentucky at Lexington

No. 1424

[File endorsement omitted]

UNITED STATES OF AMERICA, PLAINTIFF

vs.

FIRST NATIONAL BANK AND TRUST COMPANY OF LEXINGTON, SECURITY TRUST COMPANY OF LEXINGTON AND FIRST SECURITY NATIONAL BANK AND TRUST COMPANY OF LEXINGTON, DEFENDANTS

Transcript of Proceedings on Hearing—March 2, 1961

APPEARANCES

For the United States: Mr. E. Winslow Turner, Washington, D.C.; Mr. Jean L. Auxier, United States Attorney; Mr. Moss Noble, Asst. United States Attorney.

For the Defendants: Mr. Clinton M. Harbison, Lexington, Ky.; Mr. Rufus Lisle, Lexington, Ky.; Mr. James Park, Lexington, Ky.; Mr. Gayle Mohney, Lexington, Ky.

[76] Case No. 1424, styled United States of America vs. First National Bank and Trust Company of Lexington, et al. was called for hearing in the United States District Court, Eastern District of Kentucky, at Lexington, on Thursday, March 2, 1961, at 4:00 o'clock P.M., before His Honor, H. Church Ford, Judge of said Court.

The COURT. I understand that the parties in the case of United States of America vs. First National Bank and Trust Company and Security Trust Company appear and are wishing to be heard on the motion of the Government for a temporary restraining order. It is purely by agreement that you are here, Gentlemen. I am willing to hear you now as well as at some other time.

Mr. TURNER. May it please the Court, I would like to briefly go over some of the various details leading up to our meeting here this afternoon, if I may.

The COURT. Well, I want to be certain that they are ready for hearing on your motion.

[77] Mr. TURNER. I am ready for hearing on the motion.

The COURT. You are ready for hearing on the motion. I haven't even seen the motion.

Mr. PARK. We have no notice of a motion. We are here by verbal invitation of opposing counsel. We have received no notice.

The COURT. Have you received the motion? Have you received a copy of the motion?

Mr. PARK. I think we got a copy of it about 12:20 today.

The COURT. Is there any reason why we couldn't have the hearing now on the motion for a temporary restraining order?

Mr. PARK. In view of the fact, Your Honor, that they have a right to make that motion ex parte without any notice——

[78] The COURT. Yes, they have a right to do it if they set up grounds, but they have served the notice on you?

Mr. PARK. No, sir, they have not.

The COURT. I thought you said you had received a copy of the notice.

Mr. LISLE. That was for Monday morning, if the Court please.

The COURT. I understand. They informed me that you had agreed to have the hearing this afternoon instead of waiting until Monday. All I know is that that was my understanding.

Mr. PARK. That wasn't our position in regard to it. We had notice of the motion to be heard next Monday. The gentleman, opposing counsel, made the statement that he wasn't going to wait until next Monday, that he was going to file an ex parte motion here this morning.

[79] The COURT. Maybe he is going to file an ex parte motion indicating some reason that he can't wait until next Monday. You are here.

Mr. PARK. Yes, sir, we are here.

Mr. TURNER. I would like to state my position. I did go to Mr. Park's office this morning with the hope of working out some temporary stipulation with him pending a hearing on the motion which was on notice for Monday. Your Honor suggested that we do meet Monday. I recall going to Your Honor and discussing the possibility of an ex parte motion about 10:00 o'clock or so, just after I got off the train. Subsequent to that time that I discussed it with you I went back and prepared my motion for Monday. But many events have happened since the time I discussed it with you, sir. Now I found myself this morning in a position where I had to get some type of intervening relief, shall we say, before the Monday motion. I tried to work out a stipulation with Mr. Park in his office to the effect that the businesses and the operation of the businesses of these banks would be segregated and kept apart until we had a chance to hear the motion on Monday. He told me that he [80] would not make such a stipulation, that he would not make any stipulation with respect to this. I then said I would go back to you and seek the opportunity to bring on the motion for a temporary restraining order today and set it up at a time that you would be satisfied with. To my knowledge he said that would be all right. He did not object and say "I object to you doing such a thing." I understood him to agree with me on that score. We are here. He saw the notice of motion for the Monday motion in his office. I presented a copy to him. The Marshal has served both banks on this. I understand they were served around noon time. I do feel that we are properly here.

The COURT. You are here, technically speaking, on an ex parte motion, aren't you, Mr. Turner? Have you made any affidavits that entitle you to be heard?

Mr. TURNER. I think I can solve Your Honor's problem by saying that I have filed a motion—it would be considered perhaps an ex parte motion at this time—but I filed a notice of motion for Monday, a motion and a number of affidavits in support of the motion. They have been filed with the Clerk. I am not familiar with this jurisdiction. [81] I had assumed that they would be sent to you immediately. You are the Judge. For all purposes I thought perhaps you had them. If

you will give me some time, I will get them from the Clerk and let you read them. I am very sorry. This is the first time I have been in Kentucky and in this Court.

The COURT. This isn't any different from anywhere else. We operate under the Federal Rules of Procedure.

Mr. TURNER. I understand. Would you be willing to take my copy and look at it?

The COURT. Yes.

The CLERK. The court has the original.

The COURT. Mr. Turner, they are not entering their appearance to this motion, as I understand by Mr. Park. They have come over here simply because they have been invited to come under perhaps some character of vague understanding that you thought was a consent to a hearing of the motion at this time. That's what I thought it was [82], at least. Here is the situation we are in. Rule 65(b)—I haven't read it recently; maybe you have—provides:

> No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every temporary restraining order granted without notice * * *

and so on.

Now you have given a notice of a hearing of this on Monday. You have given no notice, technically speaking, for any hearing immediately, today. Have you any affidavit showing that passing it over until Monday will result in irreparable damage?

Mr. TURNER. I think the affidavits that are attached to your motion I could stand on as indicating that. I have also called some witnesses here who would testify to that effect. Unfortunately, if we are in ex parte——

The COURT. All we have to have is the affidavits setting out irreparable damage. It will take time to read these [83] affidavits. What is set out in your affidavits in the nature of irreparable damage resulting from deferring the matter until Monday?

Mr. TURNER. May I call the attention of Your Honor to the affidavit of Ernest Clarke, President of the Citizens Union National Bank?

The COURT. Yes, sir. I've got the original here, Mr. Turner. You may want to use your copy.

Mr. TURNER. Mr. Clarke in his affidavit sets forth what I believe to be a laudable record, and I believe also qualifies him not only as a witness for the bank, but as an expert as to what happens to two banks when they merge. He has been involved in a merger recently.

The COURT. That's Mr. Ernest S. Clarke's affidavit?

Mr. TURNER. That's right, sir.

The COURT. What statement in that affidavit do you [84] gentlemen think meets the requirement that irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon? That would be before Monday, because you have served notice and you will have a hearing thereon. It involves merely the interval between now and Monday morning.

Mr. TURNER. That is correct, sir.

The COURT. That is Friday, Saturday and Sunday—three days. Now I don't find anything in Mr. Clarke's affidavit that would indicate, or upon which in entering an order today ex parte, that there must be defined the injury and a statement made why it is irreparable and why the order granted without notice. That is what we are up against in undertaking to short-circuit these rules.

Mr. TURNER. As I read Mr. Clarke's affidavit, and I will read this sentence to Your Honor: "In my opinion from that hour * * *" and he is referring to the hour that the consolidation was apparently approved by the Directors and put into effect.

The COURT. Point that out to me.

[85] Mr. TURNER. I think we can start perhaps at the third paragraph on Page 1.

The COURT. There are only two paragraphs on Page 1, if I am looking at the same affidavit that you are. There are only two paragraphs on Page 1.

Mr. TURNER. The second paragraph starts "I am Ernest S. Clarke."

The COURT. Yes, perhaps that is called the second paragraph.

Mr. TURNER. I want to impress Your Honor that we are trying to introduce to you a man who has been through a merger and knows what happens once the press prints to the people of the community that a bank has merged for all purposes. He points out, as to the Citizens Bank and Trust Company:

> As soon as these books were closed * * *

(This is the second sentence in that paragraph.)

> [86] * * * the staff of the two banks intermingled their loans and discounts, and deposit accounts, both checking and savings, their trust accounts, and their general books, cash, clearings and all other assets. On the next business day, at or about 8:30 A.M., there was a meeting of the new board of the combined banks composed of the former directors of the two banks in accordance with the terms of the merger agreement.

The COURT. I read that, but what has that to do with the present situation—something that happened in 1954?

Mr. TURNER. But he is explaining, Your Honor, precisely what happens when two large banks merge and announce to the public that they are now one bank. And I have him here present and I hoped that I could put him on the stand.

The COURT. I am dealing with affidavits that are in the record. We haven't met here for the purpose of doing anything except to determine whether we can hold an ex parte hearing now.

[87] Mr. TURNER. Your Honor, unless by some means, that I am not sure that I know, these deposits, loans and trust accounts and all other transactions of these two banks are segregated and kept separate until Monday, I don't think anything that I could ask you for at that time would be perhaps a help. My point is that we have got to start now to put these banks back to where they were, because once you get thousands of customers coming in, once you get all these deposits and loans being made, the period of time gets down to a matter of a few days, it may be very difficult for these banks to transfer their assets and their services back——

The COURT. There is nothing in this affidavit that would enable me to say that it would be irreparable.

Mr. TURNER. He says:

> In my opinion from that hour on all deposits made, new loans made, notes renewed, trust business transacted and transactions in existing trust accounts, and all other business then became the property and possession of the new bank. In my opinion it would be most [88] difficult to identify any of these transactions as possibly * * *

The COURT. It might be right difficult, but that is a long way from being impossible. Banks keep their records so that those things can be dealt with. I haven't any irreparable injury stated in this affidavit upon which I can make an order now as an ex parte order. I want to make an order that will have some effect when it is made, and to do it now under these circumstances would be just short-circuiting the rule. I recognize and understand your situation and perhaps your difficulty.

Mr. TURNER. It may get more difficult by Monday. That is the——

The COURT. It may be, but here is a good bank that is responsible for all the damage that is occasioned by it and all the difficulties that will result by it.

Mr. TURNER. But I am trying to protect the United States with respect to the relief on this matter. Let's consider [89] that for a moment. It isn't necessarily the temporary restraining order or the preliminary injunction, but I am looking forward to the hearing on the merits.

The COURT. But everybody is entitled to notice of a hearing on the merits unless you show irreparable injury.

Mr. TURNER. I understand that, Your Honor, but if this bank becomes so commingled and consolidated by Monday, it will certainly be virtually impossible by then for you to order them to divest themselves——

The COURT. I see no reason for your conclusion that that would be indispensable. They could be required to identify every transaction that was made and to segregate them and return them to the banks as they originally existed. If they

can't do that, what can we do any time? Suppose you needed a month before you started your——. It might be less inconvenient, and the inconvenience will fall on the bank to segregate and straighten out.

Mr. TURNER. Would Your Honor be disposed to give me such an order up until Monday?

[90] The COURT. I can't give you any order at all. They are entitled to a hearing before I make an ex parte order, and they are not entering their appearance until the date comes that you have given them notice on.

Mr. TURNER. You are saying that I have not shown you, I gather, enough irreparable harm to at least ask for some allocation of new deposits and new loans until Monday. In other words, I can support in order without them being here if I show that there is some really serious damage and harm?

The COURT. Something that is irreparable.

Mr. TURNER. I think it is very irreparable, Your Honor, because it may very well be that by Monday it will be very difficult to find out whose account is related to whom. That is my point.

The COURT. I don't know anything about that. You haven't filed any affidavit that would show me.

[91] Mr. TURNER. I have an affidavit of probably one of the best experts we have in Lexington, Kentucky.

The COURT. I don't think it meets the situation. I will not enter any order—that is, any ex parte order, which would be what it is. I don't think it would be effective. I don't think I have the right to enter it, because the rule says that no temporary restraining order shall be entered without those conditions are fulfilled.

Mr. TURNER. Your Honor, I wish to say something in perhaps finality now. I know your disposition and I certainly appreciate your position. I hope that you can understand mine. I did go to you and discuss the possibility of an order ex parte in your chambers as soon as I got off the train from Washington, D.C. and filed the complaint. I find myself in a rather strange position.

The COURT. I asked you the first thing "Have you got an affidavit showing that irreparable damage will result from delay in giving notice?"

[92] Mr. TURNER. You did ask that and I said "I am trying to get some and I want to get the temporary restraining order because I have been informed that the boards are meeting and the banks may merge." I did not know what they were doing and I could not give you an affidavit because I had no knowledge.

The COURT. That doesn't give me any greater power because you are in that situation.

Mr. TURNER. I marked it up as you suggested for Monday.

The COURT. I set it up for Monday. Now if you will produce an affidavit that shows that you are entitled to a hearing today on account of damage which will be and is probably irreparable, I will give you a hearing on a temporary restraining order. But these things are necessary to be entered in accordance with these rules and I can't make new rules for the benefit of anybody, not even the Government.

Mr. TURNER. I stand on Ernest Clarke's affidavit.

[93] The COURT. I don't think it is sufficient. Something that happened in 1954 may happen again—I don't know. These people have had ample notice that your suit has been filed. They have had ample notice of what the results may be if they continue to carry out a so-called merger. They would have to stand the damage that would be occasioned by having to make a segregation of all assets that are commingled. It can all be undone and I think if it is undone in two days time, that there will be no irreparable injury. I can see no reason why it would.

The matter will be taken up Monday morning at 8:30.

[93a] [Reporter's certificate to foregoing transcript omitted in printing.]

[94] In the United States District Court for the Eastern District of Kentucky at Lexington

Civil No. 1424

[Title omitted]

[File endorsement omitted]

Response to Motion for Temporary Restraining Order—Filed March 6, 1961

Comes respondent, First Security National Bank and Trust Company of Lexington, and in response to plaintiff's motion for a temporary restraining order herein, states as follows:

A. Respondent is a national banking association organized under the laws of the United States, with its principal office in Lexington, Kentucky, and resulted from the consolidation, pursuant to the laws of the United States, of First National Bank and Trust Company of Lexington and Security Trust Company which are named as defendants herein, and which are hereinafter referred to as the consolidating banks, and sometimes as defendant banks.

[95] B. Pursuant to the approval of the Comptroller of the Currency of the United States, and pursuant to and in full compliance with the applicable statutes of the United States, including Public Law 86-463, 74 Stat. 129, and 12 U.S.C. Sec. 215, and the regulations of the Comptroller issued thereunder, as will hereafter more fully appear, said consolidation became effective, and the separate corporate identities of the consolidating banks became consolidated into respondent at 9:00 A.M. on March 1, 1961, and prior to the filing of the complaint herein.

C. Respondent denies that it or said consolidating banks have been or are engaged in an unlawful or any combination in restraint of interstate trade or commerce or any part thereof, or have attempted or are attempting to monopolize said trade or commerce or any part thereof, in violation of Sections 1 or 2 of the Sherman Act or at all, and denies that any such combination or attempt is continuing or will continue.

D. Respondent denies that it or said consolidating banks have obtained or as the result of said consolidation will obtain

any monopoly of trust accounts handled by commercial banks in the alleged Lexington area, as defined [96] in the complaint, or at all, or any substantial competitive advantage over other commercial banks in said Lexington area, or at all, to the detriment of competition in said area; and denies that competition in commercial banking in the Lexington area will be suppressed or interstate commerce in commercial banking will be unreasonably or at all restrained.

E. The consolidation, attacked herein as an unlawful combination, was only consummated after many months of study and all the steps taken in consummation thereof were taken with the full knowledge and approval of, and under the direction of and pursuant to the instructions of, the Comptroller of the Currency of the United States, who is the official of the United States of America, the plaintiff herein, and who is charged by the laws of the United States with the responsibility for the final approval or disapproval of bank consolidations in all cases where the resulting bank is a national bank, as in the case at bar.

The defendant, for further response, states that:

1. The Congress of the United States has provided the exclusive method for the consolidation or merger of a national [97] bank with a state bank or another national bank by Public Law 86-230f20, 73 Stat. 460 (12 U.S.C.A. 215) and by the enactment of an amendment to the Federal Deposit Insurance Act approved May 13, 1960, Public Law 86-463 (12 U.S.C.A. 1828(c)), entitled "An Act to amend the Federal Deposit Insurance Act to require Federal approval for mergers and consolidations of insured banks," which latter act, for the convenience of the Court, is set out as follows:

> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (c) of section 18 of the Federal Deposit Insurance Act is amended by striking out the third sentence and inserting in lieu thereof the following: "No insured bank shall merge or consolidate with any other insured bank or, either directly or indirectly, acquire the assets of, or assume liability to pay

any deposits made in, any other insured bank without the prior written consent (i) of the Comptroller of the Currency if the acquiring, assuming, or resulting bank is to be a national bank or a District bank, or (ii) of the Board of Governors of the Federal Reserve System if the acquiring, assuming, or resulting bank is to be a State member bank (except a District bank), or (iii) of the Corporation [98] if the acquiring, assuming, or resulting bank is to be a nonmember insured bank (except a District bank). Notice of any proposed merger, consolidation, acquisition of assets, or assumption of liabilities, in a form approved by the Comptroller, the Board, or the Corporation, as the case may be, shall (except in a case where the furnishing of reports under the seventh sentence of this subsection is not required) be published, at appropriate intervals during a period (prior to the approval or disapproval of the transaction) at least as long as the period allowed under such sentence for furnishing such reports, in a newspaper of general circulation in the community or communities where the main offices of the banks involved are located (or, if there is no such newspaper in any such community, then in the newspaper of general circulation published nearest thereto). In granting or withholding consent under this subsection, the Comptroller, the Board, or the Corporation, as the case may be, shall consider the financial history and condition of each of the banks involved, the adequacy of its capital structure, its future earnings prospects, the general character of its management, the convenience and needs of the community to be served, and whether or not its corporate powers are consistent with the purposes of this [99] Act. In the case of a merger, consolidation, acquisition of assets, or assumption of liabilities, the appropriate agency shall also take into consideration the effect of the transaction on competition (including any tendency toward monopoly), and shall not approve the transaction unless, after considering all of such factors, it finds the transaction to be in the public interest.

In the interests of uniform standards, before acting on a merger, consolidation, acquisition of assets, or assumption of liabilities under this subsection, the agency (unless it finds that it must act immediately in order to prevent the probable failure of one of the banks involved) shall request a report on the competitive factors involved from the Attorney General and the other two banking agencies referred to in this subsection (which report shall be furnished within thirty calendar days of the date on which it is requested, or within ten calendar days of such date if the requesting agency advises the Attorney General and the other two banking agencies that an emergency exists requiring expeditious action). The Comptroller, the Board, and the Corporation shall each include in its annual report to the Congress a description of each merger, consolidation, acquisition of assets, or assumption of liabilities approved by it during the period covered by the report, along with the following information; the [100] name and total resources of each bank involved; whether a report has been submitted by the Attorney General hereunder, and, if so, a summary by the Attorney General of the substance of such report; and a statement by the Comptroller, the Board, or the Corporation, as the case may be, of the basis for its approval."

Approved May 13, 1960.

2. House Committee Report No. 1416, March 23, 1960 (U.S. Code and Admr. News No. 8, June 5, 1960, at page 1013), accompanying the bill explained the objects, purposes and operations of the Act of May 13, 1960, in part as follows:

PRESENT FEDERAL BANKING LAWS ON BANK MERGERS

NATIONAL BANKS

Where a proposed merger will result in a national bank, it can normally be completed only if the Comptroller of the Currency approves. But the statute governing such mergers sets forth no standards for the Comptroller to follow in acting on such proposals. In

addition, there are special cases where, due to the form the transaction takes, approval is not directly required. That is, if the transaction is not a merger or consolidation in the technical sense, but takes the form of a national bank purchasing the assets and assuming the liabilities of another bank, the Comptroller's approval is not directly required unless [101] the capital stock or surplus of the assuming bank will be less than the aggregate capital or surplus of the combining banks. Where there is no such diminution, the Comptroller can exercise indirect control through his power to approve the necessary increase in the capital of the assuming bank, and if one of the banks is to be continued as a branch, his approval is also required. The bill, however, would remove any confusion or doubt about the Comptroller's power to act directly in these cases, and would set forth the standards on which he is to act, including the competitive factor specifically.

* * * * *

SPECIAL STANDARDS NEEDED TO CONTROL BANK MERGERS

* * * * *

Because banking is a licensed and strictly supervised industry that offers problems acutely different from other types of business, the bill vests the ultimate authority to pass on mergers in the Federal bank supervisory agencies, which have a thorough knowledge of the banks, their personnel, and their types of business. For the same reason, the bill requires consideration of the six banking factors now listed in section 6 of the Federal Deposit Insurance Act. Thus the supervisory agency would consider the financial history and condition of each of the banks [102] involved, the adequacy of its capital structure, its future earnings prospects, the general character of its management, the convenience and needs of the community to be served, and whether or not its corporate powers are consistent with the purposes of the Federal Deposit Insurance Act.

Reference to these factors, while essential, would not alone suffice, because the section 6 standards do not give sufficient weight to the factor of competition.

The Competitive Factor

The most difficult task your committee faced in considering the bill was in framing a standard to guide the supervisory agencies in weighing the effects of a proposed merger on competition. But out of the hearings one principle emerged, on which all witnesses seemed to agree, as a starting point: Some bank mergers are in the public interest, even though they lessen competition to a degree. Thus, most witnesses agreed that a bank merger would serve the public interest, even though it might lessen competition substantially, where there is a reasonable probability of the ultimate failure of the bank to be acquired; or where because of inadequate or incompetent management the acquired bank's future prospects are unfavorable and can be corrected only by a merger with the resulting bank; or where [103] the acquired bank is a problem bank with inadequate capital or unsound assets and the merger is the only practicable means of solving the problem; or where several banks in a small town are compelled by an overbanked situation to resort to unsound competitive practices, which may eventually have an adverse effect on the condition of such banks, and the merger would correct this situation.

Recognizing that other factors may outweigh an adverse effect on competition, the Senate bill provided that the banking agency acting on a proposed merger should consider whether it would "unduly lessen competition or tend unduly to create a monopoly." In the Senate Banking and Currency Committee's report this language was interpreted as follows:

"The word 'unduly' is used to show that any lessening of competition or tendency to monopoly which may be found by the agency—whether 'appreciable,' 'perceptible,' 'slight,' 'substantial,' 'serious,' or 'great'—must be

weighed and considered by the banking agency as just one of the several factors which will go to form its balanced judgment, on the basis of all of the factors involved."

Several witnesses before Subcommittee No. 2 objected to this language, on the ground that it is too ambiguous. They argued that the Clayton Act test should be applied because it has acquired more definite meaning through [104] a long series of court interpretations. Your committee notes, however, that there have been relatively few cases interpreting the Clayton Act since it was substantially changed in 1950, and that in one of these few cases it was interpreted as banning mergers having a given effect on competition, regardless of the benefits flowing from the merger. To meet this objection, the suggestion was made to apply the Clayton Act test generally, but write in specific exemptions to allow approval of mergers in the cases referred to above, involving probable failures, management problems, inadequate capital or unsound assets, or overbanked communities. This course seems unnecessarily hazardous, however, in view of the wide variety of situations in which a merger may be proposed in all good faith as a means of providing better banking service. Your committee concluded that it would be unwise to attempt to anticipate all possible situations where a merger would benefit the public, and incorporate them in a rigid specific list of exemptions.

Your committee is convinced the Senate's approach is basically sound. Where demonstrable benefits would flow from a proposed merger, these should be weighed against any adverse effect on competition. Your committee feels, however, that the language of the Senate bill can be improved to insure that the intent indicated in the legislative history of the [105] bill in the Senate will be properly carried out. Your committee concurs with the Senate committee report's repeatedly expressed intent to allow approval of bank mergers that would be in the public interest, and with the following description

of the process by which this question should be decided:

"The decision in most cases can be expected to be clear. In many cases the proposed merger will not reduce competition at all and there will be sound and convincing banking reasons for authorizing the merger. In other cases the proposed merger will clearly increase and strengthen competition, and there will be no banking factors which might lead to rejection of the merger. In still other cases, there will be serious danger of very considerable reduction in competition, and few or no sound banking reasons to approve the merger. In any of these cases, there need be little hesitation in approving or denying the application.

"The committee recognizes that in a relatively small number of cases, the balancing of the various factors will be difficult—some banking factors may be [106] favorable, some may be unfavorable; some competitive factors may be favorable, others unfavorable.

"In such cases, the decision will not be simple. Full consideration will have to be given to the basic purposes of the statute; to promote a sound banking system, in the interest of the Government, borrowers, depositors, and the public; and to promote competition as an indispensable element in a sound banking system." We are concerned, however, with some indications that under the Senate bill a merger could be approved even though it "unduly" lessened competition. While this result presumably was not intended, there are conflicting statements on this question in the legislative history of the bill in the Senate, and in the record of our hearings. Doubts on this score should obviously be removed. We are convinced, also, that approval of a merger should depend on a positive showing of some benefit to be derived from it. As previously indicated, your committee is not prepared to say that the cases enumerated in the hearings are the only instances in which a merger is in the public interest, nor are we prepared to devise a specific and exclusive list of situations in which a merger should be approved. We do,

however, reject the philosophy that doubts are to be resolved in favor of bank mergers. At the risk of saying the same thing another way, we feel the burden should be on the proponents of a merger to show that it is in the public interest, if it is [107] to be approved. After all the factors have been weighed, the transaction should be approved only if the supervisory agency is satisfied that, on balance, its effect will be beneficial. For these reasons, we recommend adoption of the committee substitute.

3. In the Senate, Senator Fulbright, in moving the adoption of the House Amendments to Senate Bill 1062, explained the objects and purposes of the bill in part as follows:

> On previous occasions when the Senate has considered bank merger bills, the principal issue has been whether bank mergers should be regulated by the Federal bank supervisory agencies—the Comptroller of the Currency in the case of national banks, the Board of Governors of the Federal Reserve System in the case of State member banks, and the FDIC in the case of insured nonmember banks—on the basis of banking factors and competitive factors, like other regulated industries; or whether bank mergers should be subject to the antimerger provisions of section 7 of the Clayton Act, like ordinary nonregulated industrial or commercial enterprises.
>
> As it passed the Senate, S. 1062 expressed the view of the Senate, for the third time, that bank mergers should be regulated by the Federal banking agencies on the basis of banking factors and competitive factors, with no single factor being in itself controlling. S. 1062 was a clear statement, for the third time, of the Senate's view that the provisions of section 7 of the Clayton Act should not apply to bank mergers.
>
> The amendments to S. 1062 made by the House do not change this aspect of the bill. The House has agreed with the Senate that bank mergers should be controlled by the Federal Banking agencies on the basis of both banking factors and competitive factors, and that section

7 of the Clayton Act should continue to be inapplicable to bank mergers.

Banking is regulated and subject to many controls not applicable to the ordinary industrial or commercial [108] enterprise; entry into the field of banking is restricted; the establishment of branches is restricted; and the practices and procedures of banking, from the payment of interest on deposits to the kinds of loans made and the reserves which must be maintained, are closely regulated and controlled. Competition in banking is desirable and beneficial; but unrestricted competition in banking, with the bank failures which would result, is no more possible than it is in the field of public utilities or other industries affected to a greater or lesser extent with the public interest. Banking is too important to depositors, to borrowers, to the Government, and the public generally, to permit unregulated and unrestricted competition in that field.

The antitrust laws have reflected an awareness of the difference between banking and other regulated industries on the one hand, and ordinary unregulated industries and commercial enterprises on the other hand. The 1950 amendment to section 7 of the Clayton Act, which for the first time imposed controls over mergers by means other than stock acquisitions, did not apply to bank mergers which are practically invariably accomplished by means other than stock acquisition. Accordingly for all practical purposes bank mergers have been and still are exempt from section 7 of the Clayton Act.

It is not clear whether the Sherman Antitrust Act of 1890 would now be held to apply to banking in general and to bank mergers in particular, though it seems clear that Senator John Sherman, the former Secretary of the Treasury, for whom the act was named, and the 51st Congress, did not expect or intend banking to be covered by an act applicable to interstate commerce. And even if the Sherman Act is held to apply to banking and to bank mergers, it seems clear that under the rule of

reason spelled out in the Standard Oil case, different considerations will be found applicable, in a regulated field like banking, in determining whether activities would "unduly diminish competition," in the Supreme Court in that case.

I should like to explain the amendments made by the House in more detail.

The House committee bill, which was passed by the House under suspension of rules on April 4, is a complete substitute for S. 1062.

Both bills require the appropriate banking agency to consider the six banking factors set forth in the [109] Federal Deposit Insurance Act. These are: First, the financial history and condition of each of the banks involved; second, the adequacy of its capital structure; third, its earnings prospects; fourth, the general character of its management; fifth, the convenience and needs of the community to be served; and sixth, whether the bank's corporate powers are consistent with the purposes of the Federal Deposit Insurance Act. S. 1062 incorporated these factors by reference; the House amendment lists them.

S. 1062, as passed by the Senate, added a seventh factor to be considered: whether the transaction would "unduly lessen competition or tend unduly to create a monopoly." The House bill substitutes for this the requirement that "the appropriate agency shall also take into consideration the effect of the transaction on competition—including any tendency toward monopoly."

The House amendment goes on to provide that the merger "shall not" be approved unless, "after considering all such factors, it—the agency—finds the transaction to be in the public interest."

The House amendment, like the Senate version of S. 1062, makes it clear that the banking factors and the competitive factors must be considered by the banking agencies. The House amendment, like the Senate version of S. 1062, makes it clear that no one of these

factors is controlling. In any given merger, competitive factors unfavorable to the merger may be outweighed by banking factors favorable to the merger, and competitive factors favorable to the merger may outweigh banking factors unfavorable to the merger. All of these seven factors must be considered and weighed together, and the merger should be approved only if, after consideration of all of these factors, the net result is in favor of the proposal.

This balancing of favorable and unfavorable banking factors along with favorable and unfavorable competitive factors, with no one of them being overlooked and no one of them being controlling, was just what was meant by the Senate when it used the word "unduly" in referring to the competitive factors. I am satisfied that the House has reached just the same result the Senate reached three times before.

This is made clear at pages 11 and 12 of the House report, where it is stated that:

[110] "Your committee is convinced the Senate's approach is basically sound. Where demonstrable benefits would flow from a proposed merger, these should be weighed against any adverse effect on competition. Your committee feels, however, that the language of the Senate bill can be improved, to insure that the intent indicated in the legislative history of the bill in the Senate will be properly carried out. Your committee concurs with the Senate committee report's repeatedly expressed intent to allow approval of bank mergers that would be in the public interest.

"After all the factors have been weighed, the transaction should be approved only if the supervisory agency is satisfied that, on balance, its effect will be beneficial."

This understanding was also expressed by Representative Brown, chairman of the subcommittee which handled the bill, in presenting the bill to the House at page 6682 of the daily Congressional Record. Representative Brown said:

"In determining whether a merger is in the public interest, the banking agency will consider the several factors listed in the bill; after weighing them, the agency will determine whether the net balance is favorable or unfavorable, and will approve the merger only if the merger is in the public interest in the sense that this balance is favorable."

The phrase "in the public interest" as used in S. 1062 is not independent; it is not isolated. The phrase is specifically and clearly tied in with the banking and competitive factors which are specifically listed in the bill. The language of the bill is entirely clear on this point:

"The agency shall not approve the transaction unless, after considering all of such factors, it finds the transaction to be in the public interest."

This distinguishes the phrase "in the public interest," as here used, from comparable phrases in other statutes where the phrase, "consistent with the public interest," is used as a general standard without reference to specific factors.

The phrase, "in the public interest," is not a new standard itself. It is not an eighth factor. It does [111] not call for a separate finding that a proposed merger is "in the public interest," aside from the banking factors and competitive factors which must be considered. The phrase is used only to indicate that if the merger is to be approved, the weighing of the seven specified factors must have resulted in a finding favorable to a merger.

The requirement that a favorable finding must be made if the merger is to be approved means only that a beneficial result must appear after the weighing of the seven specific factors set forth in the bill. It does not require the agency to go beyond these seven factors and find an independent and separate public interest in the merger.

The requirement of a favorable finding after weighing these seven factors does not seem out of place in this legislation. A favorable finding would have to be made, for example, in other cases which the banking agencies must consider, such as the chartering of a new bank. It is this distinction between banking and other businesses which justifies different treatment for bank mergers and other mergers. It was this distinction that led the Senate to reject the flat prohibition of the Clayton Act test which applies to other mergers.

Furthermore, with respect to the requirement of a favorable finding, it is clear this question remains entirely within the determination of the Federal banking agency passing upon the merger, to be based upon its weighing of the six "banking" factors and the "competitive" factor.

4. The Comptroller of the Currency, in September, 1960, issued a bulletin setting forth among other things general information and instructions concerning procedures to be followed in consolidations and mergers of National Banks and State Banks under a national charter as follows:

CONSOLIDATIONS AND MERGERS OF NATIONAL BANKS AND STATE BANKS UNDER A NATIONAL BANK CHARTER AND ABSORPTION BY NATIONAL BANKS OF OTHER NATIONAL BANKS AND STATE BANKS BY THE PURCHASE OF ASSETS AND ASSUMPTION OF LIABILITIES

Application is made on a form supplied by the Comptroller's Office which contains general information and instructions for [112] the preparation thereof. A form of Agreement is furnished with the application form for use as a guide in drafting an agreement acceptable to a majority of the Board of Directors of each bank, which forms a part of the application, and 10 copies of the application, including all documents, schedules, exhibits, etc., should be sent to the Office of the Comptroller of the Currency, Washington 25, D.C., and one copy to the District Chief National Bank Examiner.

The Comptroller is required before acting upon an application to consolidate, merge, or purchase assets and assume liabilities, to request a report on the competitive factors involved from the Attorney General, the Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve System, and to allow a period of 30 days within which such reports must be furnished.

A notice of any proposed consolidation, merger or purchase of assets and assumption of liabilities in a form approved by the Comptroller must be published at appropriate intervals for at least 30 days in a newspaper of general circulation in the community or communities where the main offices of the banks involved are located (or, if there is no such newspaper in any such community, then in a newspaper of general circulation published nearest thereto).

When the application and the required number of copies are received, the application, including the agreement between the respective banks, is referred to the Legal Division of the Comptroller's Office for review. If determined to be acceptable as [113] to form, copies of the application are forwarded to the agencies above mentioned with a request for a report on the competitive factors involved and a letter is addressed to the bank enclosing a form of notice of the proposed transaction with instructions regarding publication thereof, and an appropriate form of Affidavit of Publication to be furnished after publication has been completed. When the requested reports on the competitive factors are received from the other agencies and the Comptroller's Office has been furnished with an affidavit of publication of the 30-day notice, the case is ready for the Comptroller's consideration. The Organization Division prepares a memorandum containing the pertinent details incident to the proposal and those factors which must be considered pursuant to statute, which is routed to the Chief National Bank Examiner, each of the Deputy Comp-

trollers, and the Comptroller. The Chief National Bank Examiner and the Deputy Comptrollers comprise a Review Committee which submits its recommendation as to whether the proposal should be approved or disapproved. When the proposal reaches the Comptroller he reviews the case, including the reports on the competitive factors received from the other agencies, and the recommendation of the Review Committee and approves or disapproves the proposal. If his decision is unfavorable, the banks are so advised. If it is favorable, a letter is addressed to the bank setting forth the terms on which approval is granted and any conditions imposed.

[114] In connection with consolidations and mergers, suggested forms for use in consummating the agreement are also furnished together with a set of "General Instructions" outlining the procedural steps to be followed. On return of the necessary documents to the Comptroller's Office they are received in the Organization Division and, if executed in acceptable form, a certificate of approval is prepared for signature by the Comptroller making the consolidation or merger effective on the specified date, and when this certificate has been issued the banks are so advised by telegram.

5. The defendant banks procured from the Office of the Comptroller of the Currency Form No. 1931 (Revised July, 1960) entitled "Application for Approval to Consolidate or Merge" and prepared 11 copies thereof, including information required by the Comptroller concerning (1) Financial History and Condition of the two banks; (2) Statement of Assets and Liabilities as of October 3, 1960; (3) Description and Explanation of Adjustments; (4) Analysis of Loan and Deposit Accounts; (5) Adequacy of Capital Structure; (6) Future Earnings Prospects; (7) Management with list of proposed Directors and Officers and their experience; (8) Convenience and Needs of Community; (9) Names and location of all banks in the service area, with locations and branches; (10) Effect of Proposed Transaction on Competition with schedules attached showing: (a) Total "IPC" Deposits, both demand and time,

and total loans and discounts of First National, Security, and each other competing bank in the service area and [115] combined data for both banks to compare with other competing banks; (b) withdrawable balances and loans of savings and loan associations operating offices in the service area; (c) extent and intensity of competition in service area provided by insurance companies, credit unions, sales finance companies, personal loan companies, direct lending agencies of government; (d) extent to which each of applying banks has deposit accounts and loan accounts of same individuals, partnerships and corporations; (e) loans originated by the two banks which were shared with other banks; (f) interest rates and charges of each of the two banks and proposed interest rates and charges of the resulting bank, and relationship to such rates and charges of other competing banks and financial institutions; (g) Trust Department activities of applying banks and comparison of aggregate holdings, with details; (h) whether any officer or director owns five per cent or more of the stock of any bank; (i) whether applying banks are affiliated with or have a stock ownership in any other bank; (j) list of common ownership of stock in applying banks; (k) community growth and industrial data; (l) comment regarding overall effect of proposed transaction on the competitive situation. Copies of the proposed Agreement of Consolidation between the two banks and of the Articles of Association of the resulting bank organized as a National Banking Association were attached as exhibits to the application and 10 executed copies thereof were filed in the Office of the Comptroller on December 1, 1960, and one executed copy was mailed to the Chief National Bank Examiner.

[116] 6. The Comptroller furnished the consolidating banks with detailed instructions covering the procedures to be followed in effecting the consolidation, including publication of Notice of Proposed Bank Consolidation and of the shareholders' meetings to be called to consider and vote upon the proposed consolidation. A copy of the instructions is attached, marked "Exhibit A." All forms of notices, proxies and letters to shareholders were first submitted to and were approved by the Office of the Comptroller. The consolidating banks caused to

be published in The Lexington Leader and The Lexington Herald, newspapers of daily circulation published in Lexington, Kentucky, for the required period of time the following notice;

NOTICE OF PROPOSED BANK CONSOLIDATION

Notice is hereby given that application has been made to the Comptroller of the Currency, Washington 25, D.C. for his consent to a consolidation of First National Bank and Trust Company of Lexington, Lexington, Kentucky and Security Trust Company, Lexington, Kentucky.

It is contemplated that all offices of the above-named banks will continue to be operated.

This notice is published pursuant to section 18(c) of the Federal Deposit Insurance Act.

FIRST NATIONAL BANK AND TRUST COMPANY OF LEXINGTON,
167 West Main Street,
Lexington, Kentucky.

SECURITY TRUST COMPANY,
271 West Short Street,
Lexington, Kentucky.

[117] 7. Thereafter, between December 6, 1960, and January 12, 1961, the consolidating banks took all steps required by the statute and the rules and instructions of the Comptroller to effect the proposed consolidation, including the approval of the consolidation by the shareholders by the requisite majority, and on January 12, 1961, furnished information and proof thereof to the Comptroller on forms supplied by his office for such purpose. Under date of January 16, 1961, the consolidating banks received a letter from the Office of the Comptroller advising that all documents enclosed with the letter of January 12, 1961, relating to the subject consolidation are in acceptable form. A photocopy of said letter is attached, marked "Exhibit B."

8. The consolidating banks are informed and believe that the Office of the Comptroller, as required by the provisions of

Section 18(c) of the Federal Deposit Insurance Act, furnished copies of the Application to Consolidate to and requested a report on the competitive factors from the Attorney General of the United States, the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System.

9. On Friday, February 24, 1961, the consolidating banks were informed that the Comptroller had approved the proposed consolidation. On Monday, February 27, 1961, the consolidating banks requested permission to make the effective [118] date of the consolidation as of the opening of business March 1, 1961.

10. On Tuesday, February 28, 1961, the consolidating banks received a telegram stating: "CERTIFICATE ISSUED TODAY APPROVING CONSOLIDATION YOUR BANK AND SECURITY TRUST COMPANY, LEXINGTON, KENTUCKY, EFFECTIVE AS OF OPENING OF BUSINESS MARCH FIRST 1961. CERTIFICATES ISSUED COVERING BRANCHES. R. M. GIDNEY, COMPTROLLER OF THE CURRENCY." Said telegram is filed herewith as "Exhibit C."

11. On Tuesday, February 28, 1961, the consolidating banks received a letter from the Office of the Comptroller dated February 27, 1961, stating in part:

> The Comptroller has now considered the proposed consolidation under the terms of Section 18(c) of the Federal Deposit Insurance Act, and has concluded that it will be in the public interest. Accordingly, he has given his approval to the proposed consolidation . . .

A photocopy of said letter dated February 27, 1961, is attached, marked "Exhibit D."

12. On March 1, 1961, upon the opening of business at 9:00 o'clock A.M., and prior to the filing of the present suit or any notice thereof and in accordance with the approval of the Comptroller, the consolidating banks opened for business as a National Banking Association under the name of "FIRST [119] SECURITY NATIONAL BANK AND TRUST COMPANY OF LEXINGTON" and thereupon, as provided by the terms of Section 215(e) of Title 12 U.S.C.A., the corporate existence of each of the consolidating banks was merged into and continued in the said National Banking Association.

13. Under date of February 28, 1961, the Comptroller issued a certificate certifying the consolidation of the two banks as follows:

COMPTROLLER OF THE CURRENCY,
TREASURY DEPARTMENT OF THE UNITED STATES,
Washington, D.C.

WHEREAS, satisfactory evidence has been presented to the Comptroller of the Currency that all requisite legal and corporate action has been taken by First National Bank and Trust Company of Lexington, Lexington, Kentucky, and Security Trust Company, Lexington, Kentucky, in accordance with the statutes of the United States, to consolidate those two banking institutions under the charter of First National Bank and Trust Company of Lexington and under the title "First Security National Bank and Trust Company of Lexington", with capital stock of $2,500,000;

NOW, THEREFORE, it is hereby certified that such consolidation is approved, effective as of the opening of business March 1, 1961.

IN TESTIMONY WHEREOF, witness my signature and seal of office this 28th day of February, 1961.

R. M. GIDNEY,
Comptroller of the Currency

Charter No. 906.
Consolidation No. 961.

[120] 14. The Congress of the United States, by the enactment of Section 18(c) of the Federal Deposit Insurance Act effective May 13, 1960, has provided an exclusive method for the merger and consolidation of banks which is not applicable to any other commercial corporation and has vested the appropriate Federal Agency with the power and authority to approve or disapprove a proposed merger or consolidation based upon six banking factors and the competitive factor, no one of which is controlling. The statute directs the appropriate agency (in this case—the Comptroller) to take into consideration the effect of the transaction on competition (including any tend-

ency toward monopoly) and provides that the agency "shall not approve the transaction unless, after considering all of such factors, it finds the transaction to be in the public interest."

15. The Comptroller of the Currency has found the proposed consolidation of the two banks to be in the public interest, and in so doing he has fully considered the six banking factors and the competitive factor, including any tendency toward monopoly, as required by the statute; and the finding of the Comptroller that the proposed consolidation is in the public interest pursuant to the authority vested in him by the terms of the statute is prima facie valid and legal, and upon the issuance of the Certificate approving the consolidation the consolidated bank was authorized by law to transact business as a National Banking Association under [121] the name of FIRST SECURITY NATIONAL BANK AND TRUST COMPANY OF LEXINGTON and no damage, irreparable or otherwise, will result to the plaintiff from a denial of the temporary restraining order applied for herein.

WHEREFORE, respondent prays that plaintiff's motion for a temporary restraining order be overruled in its entirety.

HARRISON, KESSINGER, LISLE & BUSH,
ATTORNEYS AT LAW,
Security Trust Building,
Lexington, Kentucky,
By RUFUS LISLE,
And
STOLL, KENNON & PARK,
ATTORNEYS AT LAW,
310 First National Bank Building,
Lexington, Kentucky,
By JAMES PARK,
Attorneys for Respondent.

[Duly sworn to by Leroy Miles; jurat omitted in printing (all in italics).]

[122] [Certificate of service omitted in printing]

[123] *Exhibit "A" to Response*

TREASURY DEPARTMENT,
COMPTROLLER OF THE CURRENCY,
Washington 25, December 1, 1960,
(Address reply to "Comptroller of the Currency").

BOARD OF DIRECTORS, FIRST NATIONAL BANK AND TRUST COMPANY OF LEXINGTON, *Lexington, Kentucky.*

GENTLEMEN: Reference is made to the application to consolidate your bank and Security Trust Company, Lexington, Kentucky. Under the provisions of Section 18(c) of the Federal Deposit Insurance Act, we are required to request a report on the competitive factors involved from the Attorney General of the United States, the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System, and to allow a period of thirty days within which such reports must be furnished. After receiving those reports we will be in a position to give consideration to your application.

This section also provides that notice of any proposed consolidation in a form approved by the Comptroller shall be published at appropriate intervals during a period of at least thirty days in a newspaper of general circulation in the communities in which the main offices of the banks involved are located. The approved form of notice of the proposed consolidation is enclosed. The reverse side of the notice contains instructions concerning the publications. This notice should be published at once. It would be appreciated if you would inform this office of the date on which publication is first made. After publication is completed please furnish us affidavits of publication by the publishers of the newspapers in which publication is made. Forms of affidavit of publication are enclosed.

We have reviewed your agreement to consolidate and it appears to be in acceptable form.

In addition to publication of the notice as required by Section 18(c) of the Federal Deposit Insurance Act, the banks are also required by Section 215 of Title 12, of the United States

Code, to publish notice of their shareholders' meetings to vote upon the proposed consolidation. The advisability of the banks proceeding, while publication of the notice required by Section 18(c) of the Federal Deposit Insurance Act is being made, to also publish notice [124] of their shareholders' meetings required by Section 215 of Title 12 of the United States Code and to hold the meetings before the Comptroller is in a position to act upon the application is a matter for decision by the Boards of Directors of the respective banks. If publication of notice of shareholders' meetings to vote upon the proposed consolidation is undertaken and the meetings held before the Comptroller is in a position to act upon the application, the notice and shareholders' resolutions ratifying the agreement should state that the action taken is subject to the approval of the Comptroller of the Currency. With this understanding we are enclosing a copy of General Instructions relating to the procedure to be followed.

Please understand that the enclosing herewith of the General Instructions and of certain forms to be used in connection with the proposed consolidation should not be regarded as implying that the Comptroller will approve the application.

Very truly yours,

/S/ Reed Dolan,
Reed Dolan,
Chief National Bank Examiner.

Enclosures.

[125] GENERAL INSTRUCTIONS

PROCEDURE TO BE FOLLOWED IN CONSUMMATING THE CONSOLIDATION OF TWO OR MORE NATIONAL BANKING ASSOCIATIONS AND/OR ONE OR MORE STATE AND NATIONAL BANKING ASSOCIATIONS INTO A NATIONAL BANKING ASSOCIATION

There are attached, in duplicate, forms of shareholders' resolution which should be adopted by the shareholders of each bank, without change, at shareholders' meetings of the banks, called for the purpose of considering and determining by vote whether the terms and conditions of an Agreement to Consolidate, agreed upon by a majority of the Board of Directors of

each bank, shall be ratified and confirmed. The affirmative vote of at least two-thirds of the outstanding shares of stock of each bank is necessary for the ratification of the consolidation agreement under national banking laws. (If one (or more) of the consolidating banks is a State bank and the laws of the State where it is organized require a larger affirmative vote for ratification of an Agreement to Consolidate, such larger affirmative vote of the shareholders of such State bank must be obtained.)

Title 12 U.S.C., Section 215, requires, among other things, that each consolidating bank publish notice of the time, place and object of the meeting at which the consolidation is to be ratified, for four consecutive weeks in a newspaper of general circulation in the place in which the bank is located, or, if there is no such newspaper, then in a paper of general circulation published nearest thereto. The law also requires that notice of the meeting be sent to each shareholder of record by certified or registered mail at least 10 days prior to the meeting, except to those shareholders who specifically waive notice, but any additional notice shall be given to the shareholders of such State bank which may be required by the laws of the State where it is organized. The notices may run concurrently. The published notices should appear in every issue of the newspaper or newspapers selected for the full 28-day period (in five issues if a weekly newspaper is used). The shareholders' meetings of either bank may not be held until the 28th day after the date of the first publication of its notices. The shareholders of the State bank should be given any additional notice required by the laws of the State where it is organized. The mail notices should be accompanied by an explanatory letter outlining in detail the main features of the consolidation program. A draft of that letter should be furnished this office well in advance of mailing in order that we may make such comment as may be deemed necessary.

When the consolidation agreement has been properly ratified by the shareholders of each bank, there should be forwarded to the Comptroller of the Currency:

1. A certified copy of the shareholders' resolution of each bank evidencing such ratification. The agreement, as ap-

proved by the directors of the consolidating banks, should be recited in full in the resolution adopted by the shareholders of each bank.

2. Properly completed and executed affidavits covering the publication of the notices of shareholders' meetings. Forms are attached.

[126] 3. A certified specimen copy of each different form of certified mail notice, each different form of explanatory letter and each different form of proxy which may have been used by each bank in connection with its shareholders' meeting. The certification regarding the notices should include a reference to the date on which the last notices were mailed to the shareholders.

4. One properly completed and executed copy of the enclosed form certifying the book value of the acceptable assets, in excess of liabilities to creditors, which each consolidating bank has on hand and will contribute to the consolidation.

5. A signed copy of the consolidation agreement executed by a majority of the board of directors of each of the consolidating banks.

6. If one (or more) of the consolidating banks is a State bank, a statement from counsel to the effect that the consolidation is not in contravention of the laws of the State in which the State bank is organized; and to the further effect that the respective consolidating banks have taken all requisite action under the applicable State laws to authorize the consolidation, and will take such further action to consummate the consolidation as may be required by those laws.

It will be noted the various papers enclosed with this letter of General Instructions are for the use of each consolidating bank. Therefore, it will be appreciated if you will have the applicable copies of such enclosures delivered to the respective consolidating banks. The extra copies of the enclosures are for the files of each consolidating bank.

The respective shareholders' meetings should be adjourned at their conclusion to reconvene at a date prior to the proposed effective date of the consolidation, allowing at least two weeks, unless other arrangements have been approved by this office.

The shareholders' meeting should not be finally adjourned until advice has been received from the Comptroller that the consolidation has been approved.

[127] *Exhibit "B" to Response*

TREASURY DEPARTMENT,
COMPTROLLER OF THE CURRENCY,
Washington 25, January 16, 1961

(Address reply to "Comptroller of the Currency").

Re: Proposed consolidation of the First National Bank and Trust Company of Lexington, Lexington, Kentucky, and Security Trust Company, Lexington, Kentucky, under the charter of the former and title: "First Security National Bank and Trust Company of Lexington".

Mr. LEROY M. MILES,
President, First National Bank and Trust Company of Lexington,
Lexington, Kentucky.

DEAR MR. MILES: All the documents enclosed with your letter of January 12, 1961, relating to subject consolidation, are in acceptable form.

The special meeting of the shareholders of the respective banks may be finally adjourned.

Very truly yours,

C. C. Fleming,
C. C. FLEMING,
Deputy Comptroller of the Currency.

[128] *Exhibit "C" to Response*

WESTERN UNION TELEGRAM
WASHINGTON, D.C., *February 28, 1961*

LEROY M. MILES,
President, First National Bank and Trust Co., Lexington, Ky.

Certificate issued today approving consolidation your Bank and Security Trust Company, Lexington, Kentucky, effective as of opening of business March First 1961. Certificates issued covering branches.

R. M. GIDNEY,
Comptroller of the Currency.

[129] *Exhibit "D" to Response*

TREASURY DEPARTMENT,
COMPTROLLER OF THE CURRENCY,
Washington 25, February 27, 1961
(Address reply to "Comptroller of the Currency").

Re: Proposed consolidation of First National Bank and Trust Company of Lexington, Lexington, Kentucky, and Security Trust Company, Lexington, Kentucky, under the charter of the former and under the title "First Security National Bank and Trust Company of Lexington".

Mr. LEROY M. MILES,
President, First National Bank and Trust Company, of Lexington, Lexington, Kentucky.

DEAR MR. MILES: The Comptroller has now considered the proposed consolidation under the terms of Section 18(c) of the Federal Deposit Insurance Act, and has concluded that it will be in the public interest. Accordingly, he has given his approval to the proposed consolidation upon the following conditions:

1. That the consolidation will be consummated in accordance with the provisions of Title 12, U.S.C., Section 215, and in accordance with the provisions outlined in our Standard Form of General Instructions.
2. That any assets acquired by reason of the consolidation, which do not conform to legal requirements for national banks, will be made to conform or be eliminated within a reasonable period after the consolidation becomes effective.
3. That the fixed assets to be acquired by reason of the consolidation will not be set up on the books of the consolidated bank in excess of the present carrying value as shown on the books of the Security Trust Company.

Approval is also given to the consolidated bank to continue to operate the present three branches of First National Bank and Trust Company of Lexington, and to establish branches at the location of the head office and present branch of Security Trust Company.

[130] Please furnish this office the date of the establishment of and the street address of The North Broadway Branch of the Security Trust Company.

It is understood that the effective time of the consolidation will be as of the close of business on the date to be selected by the banks. We should be advised as soon as possible when the effective date has been decided upon.

You are reminded that there should be forwarded to this office as promptly as possible the List of Directors and the Oaths of all Directors of the consolidated bank, as well as a statement of condition of each of the consolidating banks, as shown by its books, immediately prior to the effective time of the consolidation; and a statement of condition of the consolidated bank, as shown by its books, immediately after the effective time of consolidation. Blanks for this purpose are enclosed.

Very truly yours,

REED DOLAN,
Chief National Bank Examiner.

Enclosures.

* * * * * *

[154] In the United States District Court, Eastern District of Kentucky at Lexington

[File endorsement omitted]

Civil Action No. 1424

[Title omitted]

Court's Ruling on Plaintiff's Motion for Temporary Restraining Order—March 6, 1961

This cause coming on to be heard on motion of the plaintiff for a temporary restraining order enjoining defendants named in the caption from taking any steps in furtherance of an agreement between First National Bank and Trust Company of Lexington and Security Trust Company to merge and consolidate, and the Court having heard statements of counsel and

having considered same together with affidavits submitted by plaintiff in support of its motion and the verified response filed by defendant, First Security National Bank and Trust Company of Lexington herein, and it appearing to the Court that pursuant to the approval of the Comptroller of the Currency of the United States the First National Bank and Trust Company of Lexington and Security Trust Company were consolidated as of the opening of business on March 1, 1961, into defendant First Security National Bank and Trust Company of Lexington as a National Banking Association [155] under the laws of the United States; and the Court being advised, it is now ordered and adjudged as follows:

1. That defendant, First Security National Bank and Trust Company of Lexington, as a National Banking Association under the laws of the United States, is duly authorized to conduct and carry on a banking business in Lexington, Kentucky;

2. Until the further orders of the Court, the defendant, First Security National Bank and Trust Company of Lexington, shall insofar as may be reasonably possible under the national banking law of the United States and the applicable regulations of the Comptroller of the Currency, the Federal Reserve Board and the Federal Deposit Insurance Corporation, and in accordance with sound banking practices, keep and maintain its assets, liabilities, internal records and accounts in such manner that in the event the consolidation is ultimately adjudged to be dissolved and a separation is ordered, its capital stock, assets, liabilities and accounts can be equitably divided between the consolidating banks in accordance with their respective rights;

3. Pursuant to paragraph 2 hereof, defendant shall:

(a) Keep and maintain stock ledgers and records adequate to show which shares of stock in the consolidated bank have been or are issued in exchange for stock in each of the consolidating banks and preserve all stock certificates of the consolidating banks received in exchange therefor;

[156] (b) Keep and maintain trust records showing which of the consolidating banks was named by the settlor or testator

as the fiduciary; and as to qualifications prior to March 1, 1961, showing which of said consolidating banks originally qualified as fiduciary;

(c) Keep and maintain records adequate to identify which of the accounts in the consolidated bank were maintained in each of the consolidating banks as of the close of business February 28, 1961;

(d) Keep and maintain records adequate to identify all equipment, materials, employees, and real or personal property, investments and securities belonging to each of the consolidating banks or their customers as of the close of business on February 28, 1961;

(e) Keep and maintain records adequate to identify all notes and other obligations held by each of the consolidating banks as of the close of business on February 28, 1961;

(f) Keep and maintain the present Trust Departments of the consolidating banks as at February 28, 1961, at their present locations and with substantially the same personnel;

(g) Keep and maintain records adequate to identify which accounts, notes, loans and other transactions are had with customers who were not customers of either of the consolidating banks prior to March 1, 1961;

4. This order shall continue in full force and effect until further orders of the Court and shall make unnecessary any hearing [157] on the motion for temporary injunction heretofore assigned for Friday, March 10, 1961. The Court reserves the right to make any modification or supplemental orders that may be necessary from time to time in the premises.

5. This case is assigned for trial to the Court in the Federal Court Room at Lexington, Kentucky, on Monday, May 1, 1961, beginning at 9 A.M. (Eastern Standard time) or as soon thereafter as it can be reached in the procedure of the Court.

/s/ H. CHURCH FORD, *Judge*.

MARCH 6, 1961.

[158] No. 1424

In the United States District Court, Eastern District of Kentucky

[File endorsement omitted]

UNITED STATES OF AMERICA, PLAINTIFF

vs.

FIRST NATIONAL BANK & TRUST COMPANY OF LEXINGTON, SECURITY TRUST COMPANY OF LEXINGTON, AND FIRST SECURITY NATIONAL BANK & TRUST COMPANY OF LEXINGTON, DEFENDANTS

Transcript of Proceedings on Hearing—March 6, 1961

APPEARANCES

For the United States: Mr. E. Winslow Turner, Washington, D.C.; Mr. George D. Reycraft, Washington, D.C.; Mr. Melvin Spaeth, Washington, D.C.; Mr. Jean L. Auxier, United States Attorney; Mr. Moss Noble, Assistant U.S. Attorney.

For the defendants: Mr. James Park, Lexington, Kentucky; Mr. Gayle Mohney, Lexington, Kentucky; Mr. Clinton M. Harbison, Lexington, Kentucky; Mr. Rufus Lisle, Lexington, Kentucky.

[159] Case No. 1424, styled United States of America vs. First National Bank & Trust Company of Lexington, et al., was called for hearing in the United States District Court for the Eastern District of Kentucky, at Lexington, at 8:30 o'clock A.M. on March 6, 1961, before His Honor, Judge H. Church Ford, Judge of said Court.

Mr. TURNER. Your Honor, before my presentation I would like to introduce two of my associates from Washington, D.C., Mr. George D. Reycraft and Mr. Melvin Spaeth.

The COURT. Do you desire to have them admitted to the bar so they may practice?

Mr. TURNER. I so desire.

The COURT. Mr. Turner, do you vouch for the qualifications of these young men by our rules?

Mr. TURNER. I do, sir.

The COURT. Let them be sworn.

[160] (Mr. George D. Reycraft and Mr. Melvin Spaeth, both of Washington, D.C., were sworn by the Clerk.)

The COURT. There is a motion here this morning, Mr. Clerk, that you may call.

The CLERK. No. 1424, United States of America against First National Bank & Trust Company of Lexington, Security Trust Company of Lexington and First Security National Bank & Trust Company of Lexington.

The COURT. Mr. Clerk, see if you can find the motion. It will save time. I can't find it.

The CLERK. Yes, Your Honor.

The COURT. Are you ready to be heard on your motion for temporary restraining order at this time?

Mr. PARK. May we inquire whether the Response has been filed that we asked Your Honor Saturday?

[160a] The COURT. I have a copy of it. I assume it has been filed. Do you want to search through here to see?

Mr. PARK. It was the original that we sent to Your Honor.

The COURT. I understand that.

The CLERK. That is not in the record.

The COURT. You sent me the Response, an original pleading in the case.

Mr. PARK. We thought it would be easier to read than a copy.

The COURT. That's all right. Have you got a copy? I made a lot of scratches all over this one and I would rather you would just go on and file your copy.

Mr. PARK. We will do that, Your Honor. We will have to verify it.

[161] The COURT. Let it be filed.

Mr. PARK. We can consider it filed, Your Honor, and we will get a copy and have it verified and filed.

The COURT. Whatever you want to do about it. Is that all right?

Mr. TURNER. I received a copy of the Response on Saturday, and I believe that is the same one you are referring to.

Mr. PARK. Yes, sir.

The COURT. All right, Gentlemen. Mr. Turner, it is your motion. You may proceed.

Mr. TURNER. Your Honor, we are again before you to urge you to grant a temporary restraining order to prevent these banks from commingling their assets and operations in such a manner that it will be impossible for us to divest the company, put them back to the position in which they were competitive before the merger. A temporary restraining order [162] is something that is extremely important today, even more than it was on Friday.

The COURT. I understand that. What I want to know is the legal proposition. We won't argue on questions of importance because that doesn't confer jurisdiction. Now my time is somewhat limited and I want to get right to the legal problem that is presented here.

Mr. TURNER. I will sir. I will put it as clearly as I can. The defendants claim that a statute provides for an exclusive method for determining and approving bank mergers, that the Comptroller of the Currency has approved this merger under that statute, and, therefore, the merger is valid and there is no need for a temporary injunction. The Department's position, or rather the United States' position, is that the decision of the Comptroller of the Currency has nothing to do with the antitrust question here. There is nothing in the statute, Public Law 86463, which gives the power to the Comptroller to decide the antitrust question, the question presented by the Complaint in this action. There is nothing in the statute which immunizes bank mergers from antitrust jurisdiction. The Comptroller of the Currency's determination at best is based essentially on [163] fiscal and operational factors for the protection of the public in this merger. Competitive factors which he was required to consider are only a small part of a number of other factors to determine whether the merger under his statute was accepted. But the most important thing

is that the reports of the House, the majority reports of the House and Senate which reported out this bill to the Legislature, absolutely state that the antitrust laws shall apply to bank mergers.

The COURT. Where did you find that statement? I haven't seen the report, except the House report.

Mr. TURNER. This is the report, "Committee on Banking Currency of the Senate," and this is the report of the House.

The COURT. I didn't mean to cut you off. I am not going to stop now and read these. I can't.

Mr. TURNER. I think I have argued my point.

The COURT. You have stated it, at least. Let's hear from the other side.

[164] Mr. PARK. Your Honor, our position in this matter is that this application for consolidation of the two banks having been filed with the Comptroller of the Treasury, and the Comptroller having considered the application and all of the evidence submitted in support of it, and under the statutory duty the Comptroller having taken into consideration the effect of the transaction upon competition, including any tendency toward monopoly—that is the language of the statute—and approved this application as being in the public interest, now we take the view that that is at least prima facie correct. While we do not want to press the point at this stage of this proceeding, we think that the Comptroller's action is final until it is set aside and vacated by some attack other than a collateral attack on it. That is our position in regard to that, Your Honor. We are a merged bank now. The two former banks have gone out of legal existence. Under the statutes they are merged into the merged bank and have no separate corporate entity at this time. We have authority from the Comptroller to operate as a bank and we feel that we are compelled to do that. I may say at this time that we recognize the possibility that at the end of litigation we may have to restore these banks to their former status and we recognize that for our own protection we must do everything that we can to keep [165] the assets segregated and identifiable so they can be restored. That we expect to do. That is our position in regard to that, Your Honor.

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Mr. TURNER. May I say then, Your Honor, that I do not feel that defendant is in any way challenging the jurisdiction of this Court to hear the antitrust issues in this case.

The COURT. Certainly nobody is claiming that they could be heard at this time. You mean the case on the merits?

Mr. TURNER. No, sir, I am saying that you do not have jurisdiction over bank mergers under the antitrust laws. Therefore, I think the only issue is what kind of an order we can get to protect the United States' position to assure the United States that this bank will keep segregated all the essential parts of its business until this case is finally heard and decision rendered.

Mr. PARK. Your Honor, assuming that the Court has jurisdiction to hear this antitrust case, it doesn't follow at all that the Government in this instance is entitled to [166] a temporary restraining order. They have not made out a prima facie case, I think, in light of the Comptroller's action in approving this merger. That over-balances, to my way of thinking, any prima facie case they may have made by the verified complaint setting out certain facts. Assuming they have made out a prima facie case, the necessity of a temporary restraining order lies within the discretion of the Court; and there must be some irreparable injury or damage to the plaintiff, United States of America, unless this temporary restraining order is issued, in order for the Court to exercise its discretion.

The COURT. "Irreparable" would apply to a restraining order without notice. Here is what I want to ask you, and I think we can get maybe to the problem immediately presented. A temporary restraining order that can be entered to maintain the situation in status quo——

Mr. PARK. As nearly as may be.

The COURT. As nearly as may be, I think would do no harm to you and no harm to the Government; and to that extent I am willing—I am exceedingly doubtful about the jurisdiction of the Court in this case, but for some [167] immediate protection in the event my possible views might develop that way or the other way, apparently from Mr. Park's statement it is possible, and you will assume the responsibility of keeping the commingled or possibly commihgled assets separate.

Mr. PARK. As nearly as humanly possible.

The COURT. That's all an angel could do. I assume that is humanly possible and that they will continue in that status, maintaining a situation, that when this case gets to its determination you are going to have a motion for a temporary injunction that may present—you might be able to work out a plan for hearing it on its merits. There is this situation involved. This character of business ought not to be obstructed any longer than is possible. If it is a violation of the antitrust law, they ought to know it as soon as possible and you ought to know it as soon as possible. Now can you plan to present the question on its merits and let us hear what proof you have got? Are you basing your idea of violation of the law merely upon the consolidation, the act of consolidation?

Mr. TURNER. No, that is part of it. There will be a [168] considerable amount of the evidence which will be documentary, statistical, economic, that type of thing.

The COURT. I was wondering if we might not overpass the motion for a temporary injunction and let the restraining order remain in effect until a certain day and set it down for a day on its merits. This kind of case ought not to be developed on its merits; if it has any merits, they ought to be recovered. We have got nothing here in the way of allegations except simply a statement which is largely a conclusion, not a single act of wrong-doing. You haven't got even an ethical wrong-doing charged. In the light of the most recent opinion, which I suppose you have all seen, this antitrust case that went up and was handed down on February 20th, it has not been published—have any of you seen it?

Mr. TURNER. I don't believe I have.

The COURT. Eastern Railroad Presidents Conference, et al., Petitioners, v. Noerr Motor Freight, Inc., et al. I have read it hurriedly. It is a very interesting commentary on the fact that the antitrust law does not cover all of the world nor all of the things that can happen or that might [169] happen. They had an admission and a finding of two lower courts that the railroad companies were combined into an arrangement or combination to destroy the trucking interests in order that they might get control of the long-haul traffic. The method they used was to circulate false reports about the trucking business.

There was another issue that seemed to take a prominent position, and that was that they were going to the Legislature and seek to petition for legislation to put the trucks out of business. But there was more than that, and that Court gave its attention to the fact that it was found that they were actually circulating false advertisements and false reports, and it said that is not a character of thing that comes within the antitrust laws. I read it with very much interest last night. I haven't given it a great deal of study. But they quoted, apparently with approval, and this was a unanimous opinion, for a change:

> If ulterior motives of corporate aggrandizement stimulate their activities, their efforts were not thereby rendered unlawful. If the Act and Order are otherwise valid, the fact that their effect would be to give cooperatives a monopoly of the market would not violate the Sherman Act.

Mr. TURNER. I will very definitely go back to my office and read that case.

[170] The COURT. I think it would be of interest to you, to all of us. I don't know whether it is going to be any help in this narrow question we have got, but what I am discussing with you is the probability of working out, as promptly as possible, a reaching of a conclusion that can be taken to the Appellate Courts, if you want to; and these people will be endangering themselves considerably the longer it goes. See if you can't work out an agreed order.

Mr. PARK. Your Honor, we have drafted an order which, in the first place, recognizes the authority of the consolidated bank to do business. Now that is the only existence we have is through the action of the Comptroller of the Treasury in approving this merger agreement and issuing his certificate on that. We want to recite in this order that the First National Bank & Trust Company of Lexington and the Security Trust Company have consolidated and opened for business on March 1st in the defendant First National Security, which, as the surviving corporation, is duly authorized to conduct and carry on a banking business in Lexington, Kentucky, as a banking association under the laws of the United States. Secondly,

we have put in this order: "Until the further order of the Court the defendant First Security National Bank & Trust Company of Lexington shall, [171] insofar as may be reasonably possible under the national banking laws of the United States and the applicable regulations of the Comptroller of the Currency, Federal Reserve Board and Federal Deposit Insurance Company, and in accordance with sound banking practices, keep and maintain its assets, liabilities, internal records and accounts in such manner that, in the event the consolidation is ultimately adjudged to be dissolved, its capital stock liabilities and accounts can be equitably divided between consolidating banks in accordance with their respective rights."

The COURT. Have you given them a copy of that?

Mr. TURNER. This, of course, is the first time that I have seen that order. I would like to ask a few questions about it. Your Honor has our proposed order and it does spell out much more clearly the things we wanted. I have submitted to them a revised copy and I have submitted them a draft copy yesterday, in order to keep them fully informed as to what we were doing, and I would like to ask counsel primarily, first, whether you have intention of distributing, exchanging the stock which is now, as I understand it, presently residing in the new bank, to the stockholders of Security and First National in exchange for their old stock?

[172] Mr. PARK. We have got the problem of paying a dividend on April 1st. Whether we can legally pay that dividend to the beneficial owners of the new stock in the new bank without the issuance of that is a problem that we haven't cleared yet.

The COURT. Gentlemen, let me suggest this to you. Now if lawyers will save unnecessary controversy, you can do it by sitting down around the table and making a reasonable effort to work out an order that will preserve the status quo without impairing your operations as a bank and your interest. Now I have got to go on here, the Jury is sitting here waiting to try a case. If you gentlemen can't agree to an order I will meet you this afternoon as soon as I get through this trial, and, if you will point out to me the points upon which you disagree, I will undertake to work out what I think should be the substance of

the order. Now there is no reason why at this early stage that wouldn't save a lot of trouble or difficulty.

Mr. PARK. We think this order should be in general terms, instead of having the Court take over.

The COURT. I am not going to run the bank, I'll say that [173] to you. I am not going to prescribe how the bank is to run, I wouldn't undertake that, but I don't want it so general that it won't have any meaning.

Mr. TURNER. I am very happy to meet with counsel as soon as possible.

The COURT. Can you agree on a meeting place? Is your office available, Mr. Park?

Mr. PARK. It certainly is.

The COURT. You know where it is?

Mr. TURNER. Yes, sir, I have served him papers over there.

The COURT. You will find they will be hospitable there.

[174] [Reporter's certificate to foregoing transcript omitted in printing.]

* * * * * * *

[188] In the United States District Court for the Eastern District of Kentucky at Lexington

Civil Action No. 1424

[Title omitted]

[File endorsement omitted]

Answer—Filed March 21, 1961

The defendant, First Security National Bank and Trust Company of Lexington (First Security), a National Banking Association resulting from the consolidation of the named defendants, First National Bank and Trust Company of Lexington and Security Trust Company, for and on behalf of the named defendants herein, for answer to plaintiff's complaint as amended, according to the numbered paragraphs thereof, pleads as follows:

FIRST DEFENSE

1. The allegations of paragraph 1 are mere conclusions of law. However, First Security denies that Sections 1, 2 or 4

of the Sherman Act (15 U.S.C.A. 1, 2 and 4) are applicable to the transactions, agreements and acts of it and its predecessors [189] as alleged in the complaint, and denies any violations of said act. First Security states that the transactions, agreements and acts of it and its predecessors as alleged in the complaint are subject to and solely governed by the National Bank Act, as amended (Public Law 86-230f20, 73 Stat. 460, 12 U.S.C.A. 215) and Section 18 of the Federal Deposit Insurance Act, as amended (Public Law 86-463, 12 U.S.C.A. 1828).

2. Admits that First Security has its principal place of business, transacts business and is found within the Eastern District of Kentucky, but denies the remainder of pargraph 2.

3, 4. Admits that First National was a national banking association, organized under the laws of the United States, and that Security was a state bank, organized under the laws of the State of Kentucky, both with their principal places of business in Lexington, Kentucky, prior to their consolidation as First Security effective at the opening of business on March 1, 1961, but avers as more fully set out in its THIRD DEFENSE herein that the corporate existence of each of said banks was merged into First Security as provided in Section 215(e) of Title 12 U.S.C.A. and Section 287.173 of Kentucky Revised Statutes, prior to the filing of this complaint or any notice thereof.

5. Admits that commercial banking is an essential part of the nation's economy, but denies that the services referred to in paragraph 5 are unique and avers that many of the services referred to are performed by other financial institutions, including savings and loan associations, insurance companies, general [190] finance companies, credit unions, sales finance companies, small loan companies and direct lending agencies of the Federal Government, all of which compete with this defendant and all other commercial banks.

6. Admits that First Security is a commercial bank operating primarily within the metropolitan area of Lexington, Kentucky, but avers as more fully stated in its SECOND DEFENSE herein that First Security will be able to operate in an enlarged area in Central and Eastern Kentucky and furnish effective competition in said enlarged area to banks and other

financial agencies located in other larger metropolitan areas, including Louisville and Cincinnati; admits that First Security is a member of the Federal Reserve System, is insured with Federal Deposit Insurance Corporation, and regularly uses interstate communications such as the mails, telephone and telegraph to conduct its banking business with customers, and with other banks, persons or firms located outside the state of Kentucky, but denies the remainder of paragraph 6, and specifically denies that First Security is engaged in interstate commerce for the purposes of Sections 1, 2 or 4 of the Sherman Act cited in paragraph 1 of the complaint, alleged by plaintiff to apply to the agreement of consolidation and the actions of defendants referred to in the complaint. All allegations of paragraph 6 as to First National Bank and Trust Company and Security Trust Company are denied.

7. Admits paragraph 7 with respect to First National Bank and Trust Company prior to its consolidation on March 1, 1961.

[191] 8. Admits the first sentence of paragraph 8 and denies the remainder of said paragraph.

9. Admits paragraph 9 with respect to Security Trust Company prior to its consolidation on March 1, 1961.

10. Admits the first sentence of paragraph 10 and denies the remainder of said paragraph.

11. First Security admits that prior to the consolidation First National and Security Trust performed most, if not all, types of commercial banking activities and that they competed actively with each other and with other banks in some but not all of such banking activities, but avers that the competition between First National and Security was such that the consummation of the consolidation will not significantly, substantially of unreasonably lessen competition in banking activities in the Lexington area.

12. Admits that there are four other commercial banks located in Lexington competing with the defendant and avers that each of said banks has and furnishes to the public most, if not all, of the banking facilities referred to in the complaint and further avers that commercial banks outside the Lexington area compete actively for all types of banking business with

the banks within the Lexington area and that savings and loan associations, credit unions, insurance companies, small loan and finance companies, direct lending agencies of the Federal Government, and other types of financial institutions compete actively for most, if not all, types of business generally [192] handled by commercial banks in the Lexington area. First Security is without knowledge or information sufficient to form a belief about the truth of the allegations in the second and third sentences, and denies the allegations of the last sentence of paragraph 12.

13. Admits paragraph 13, but avers that the metropolitan Lexington area as set out in the complaint is not the area of effective competition applicable to this proceeding but is only a part of the much larger relevant competitive market in banking in which defendant has been, is and will be transacting business and in which it and many other and much larger banks, financial institutions and lending agencies effectively compete.

14. Admits paragraph 14 and avers that the consolidation was approved by the Comptroller and was effected as of the opening of business on March 1, 1961, and that the competition between First National and Security was such that the consolidation did not significantly, substantially or unreasonably lessen competition in banking activities in the Lexington area.

15, 16, 17. Denies paragraphs 15, 16 and 17. First Security avers that the two consolidating banks entered into an agreement to consolidate and that they did, in fact, effect said consolidation as set forth in the THIRD DEFENSE of this answer. First Security denies that said acts constitute an offense under the Sherman Act and avers that they were valid and legal by reason of the approval of said agreement by the Comptroller of the Currency as set forth in the THIRD DEFENSE of this answer.

SECOND DEFENSE.

[193] 18. The metropolitan Lexington area is the second largest urban area in the state of Kentucky. Lexington is the largest urban area that lies between Louisville, which is 75 miles to its west, Huntington, W.V., which is 145 miles to its east, Cincinnati, Ohio, which is 90 miles to its north, and Knoxville, which lies 195 miles to its south, and is the commercial hub of

an extensive surrounding area consisting of most if not all of Central and Eastern Kentucky. Lexington has been an educational center for many years, but its economy has been predominantly agricultural. In the past ten years, many large national concerns have established plants, distribution and sales agencies, and other branches and offices in the metropolitan Lexington and surrounding area, and during that time this area has experienced a rapid growth in population and in its economy. Heretofore, the lending capacities and other facilities of the individual banks in Lexington and the surrounding area have not been sufficient to supply the financial needs of many of these industries, other businesses and individuals. They have found it necessary to obtain, and have obtained, the required financial services from banks and other financial and lending agencies located in Louisville, Cincinnati and even more distant points. By reason thereof, said banks and other financial and lending agencies have been and are actively competing for business in Lexington and the surrounding area. Lexington is so strategically and [194] geographically located that First Security can now provide faster and better banking and financial services in many respects, not only to private industry and private citizens but also to other commercial banks in outlying areas who have heretofore found it necessary to obtain correspondent banking and other banking services from banks located in Louisville, Cincinnati and other larger financial centers. The proper area of effective competition is not limited to the metropolitan area of Lexington, but includes most, if not all, of Central and Eastern Kentucky, and First Security as a consolidated bank will be able to and will compete more effectively with the banks and other financial agencies in Louisville, Cincinnati, Huntington and Knoxville for business that such banks and agencies have heretofore obtained from the area around Lexington and in Central and Eastern Kentucky. By reason thereof, First Security has not obtained a monopoly and competition in commercial banking in the relevant area of effective competition will not be unreasonably restrained, or restrained at all; but on the contrary competition will be strengthened and will in fact be created for the first time in many commercial banking facilities and functions.

19. On December 1, 1960, pursuant to the approval of the Boards of Directors of First National and Security of an Agreement of Consolidation of these two banks, and pursuant to the [195] provisions of the National Bank Act, as amended (12 U.S.C.A. 215), and regulations and instructions issued thereunder and Section 18(c) of the Federal Deposit Insurance Act, as amended (12 U.S.C.A. 1828(c)), an application was prepared and filed with the Comptroller of the Currency on December 1, 1960, to obtain his approval and consent to the consolidation of Security Trust Company with First National Bank and Trust Company of Lexington into First Security. As required by the foregoing statutes, regulations and instructions said application contained information concerning: (1) Financial History and Condition of the two banks; (2) Statement of Assets and Liabilities as of October 3, 1960; (3) Description and Explanation of Adjustments; (4) Analysis of Loan and Deposit Accounts; (5) Adequacy of Capital Structure; (6) Future Earning Prospects; (7) Management, with a list of proposed Directors and Officers and their experience; (8) Convenience and Needs of Community; (9) Names and Location of all banks in the service area, with locations and branches; (10) Effect of Proposed Transaction on Competition, with schedules attached showing (a) Total "IPC" Deposits, both demand and time, and total loans and discounts of First National, Security and each other competing bank in the service area and combined data for both banks to compare with other competing banks, (b) withdrawable balances and loans of savings and loan associations operating offices in the service area, (c) extent and intensity of competition in service area provided by insurance companies, credit unions, sales finance companies, personal loan companies and direct lending agencies of government, (d) extent to which each of applying [196] banks has deposit accounts and loan accounts of same individuals, partnerships and corporations; (e) loans originated by the two banks which were shared with other banks, (f) interest rates and charges of each of the two banks and proposed interest rates and charges of the resulting bank, and relation to such rates and charges of other competing banks and financial institutions, (g) Trust Department activities of ap-

plying banks and comparison of aggregate holdings, with details, (h) whether any officer or director owns five per cent (5%) or more of the stock of any bank (i) whether applying banks are affiliated with or have a stock ownership in any other bank, (j) list of common ownership of stock in applying banks, (k) community growth and industrial data, (l) comment regarding overall effect of proposed transaction on the competitive situation.

20. Thereafter, proper and timely notices of the Proposed Bank Consolidation and of the shareholders' meetings to be called to consider and vote upon the proposed consolidation were given and published as required by law. Between December 6, 1960, and January 12, 1961, the two consolidating banks took all steps required by law to effect the proposed consolidation, including the approval of the consolidation by the shareholders by the requisite majority. Proof that all such steps had been taken was promptly furnished to the Comptroller on January 12, 1961. Under date of January 16, 1961, the consolidating banks were advised by a letter from the office of the Comptroller that all documents enclosed with the letter of January 12, 1961, relating to the subject consolidation were in acceptable form.

[197] 21. Copies of said application submitted by the consolidating banks to the Comptroller of the Currency were in turn furnished by him to the Attorney General of the United States, the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System. As required by law, the Comptroller requested and received advisory reports concerning the proposed consolidation from the Attorney General, the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System on the competitive factor involved. These reports and the other information available to the Comptroller were carefully considered by him pursuant to the statutory requirement that he determine whether the proposed merger is in the public interest after considering seven factors: "the financial history and condition of each of the banks involved, the adequacy of its capital stock, its future earnings prospects, the general character of its management, the convenience and needs of the community to

be served, and whether or not its corporate powers are consistent with the purposes of the Federal Deposit Insurance Act" and "the effect of the transaction on competition (including any tendency toward monopoly)" (12 U.S.C.A. Section 1828(c)). After such careful consideration of the matter, the Comptroller, pursuant to the applicable statutes, determined the proposed merger to be in the public interest and gave his approval of the proposed merger.

22. On February 24, 1961, the consolidating banks were informed that the Comptroller had approved the proposed consolidation. On February 27, 1961, said banks requested permission to [198] make the effective date of the consolidation as of the opening of business on March 1, 1961.

23. On February 28, 1961, said banks received a telegram stating: "CERTIFICATE ISSUED TODAY APPROVING CONSOLIDATION YOUR BANK AND SECURITY TRUST COMPANY, LEXINGTON, KENTUCKY, EFFECTIVE AS OF OPENING OF BUSINESS MARCH FIRST 1961. CERTIFICATES ISSUED COVERING BRANCHES. R. M. GIDNEY, COMPTROLLER OF THE CURRENCY."

24. Also on February 28, 1961, said consolidating banks received a letter from the Office of the Comptroller dated February 27, 1961, stating in part: "The Comptroller has now considered the proposed consolidation under the terms of Section 18(c) of the Federal Deposit Insurance Act, and has concluded that it will be in the public interest. Accordingly, he has given his approval to the proposed consolidation * * *"

25. On March 1, 1961, upon the opening of business at 9:00 o'clock A.M., and prior to the filing of the present suit or any notice thereof and in accordance with the approval of the Comptroller, the consolidating banks opened for business as a National Banking Association under the name of "FIRST SECURITY NATIONAL BANK AND TRUST COMPANY OF LEXINGTON" and thereupon, as provided by the terms of Section 215(e) of Title 12, U.S.C.A., the corporate existence of each of the consolidating banks was merged into and continued in the said National Banking Association.

[199] 26. Under date of February 28, 1961, the Comptroller issued a certificate certifying the consolidation of the two banks as follows:

COMPTROLLER OF THE CURRENCY,
TREASURY DEPARTMENT OF THE UNITED STATES,
Washington, D.C.

WHEREAS, satisfactory evidence has been presented to the Comptroller of the Currency that all requisite legal and corporate action has been taken by First National Bank and Trust Company of Lexington, Lexington, Kentucky, and Security Trust Company, Lexington, Kentucky, in accordance with the statutes of the United States, to consolidate those two banking institutions under the charter of First National Bank and Trust Company of Lexington and under the title "First Security National Bank and Trust Company of Lexington," with capital stock of $2,500,000;

NOW, THEREFORE, it is hereby certified that such consolidation is approved, effective as of the opening of business March 1, 1961.

IN TESTIMONY WHEREOF, witness my signature and seal of office this 28th day of February, 1961.

R. M. GIDNEY,
Comptroller of the Currency.

Charter No. 906.
Consolidation No. 961.

27. The Congress of the United States, by the enactment of Section 18(c) of the Federal Deposit Insurance Act effective May 13, 1960, has provided an exclusive method for the merger and consolidation of banks which is not applicable to any other commercial corporation and has vested the appropriate Federal Agency with the power and authority to approve or disapprove a proposed merger or consolidation based upon six banking factors and the competitive factor, no one of which is controlling. [200] The statute directs the appropriate agency (in this case—the Comptroller) to take into consideration the effect of the transaction on competition (including any tendency toward monopoly) and provides that the agency "shall not approve the transaction unless, after considering all of such factors, it finds the transaction to be in the public interest."

28. The finding and determination by the Comptroller that the consolidation of said two banks into First Security is in the public interest after full consideration was given by him to the six banking factors and the competitive factor, including any tendency toward monopoly, is the final and exclusive determination of desirability, propriety and legality of the consolidation of said two banks under all applicable federal laws and said finding and determination of the Comptroller and the subsequent consolidation of said two banks into First Security pursuant thereto are final, conclusive and binding upon the plaintiff herein.

FOURTH DEFENSE

29. The complaint, as amended, fails to state a claim upon which relief can be granted.

FIFTH DEFENSE

30. The Court has no jurisdiction over the subject matter of this action.

SIXTH DEFENSE

31. Sections 1, 2 and 4 of the Sherman Act (15 U.S.C.A. 1, 2 and 4) are not and were not intended to be applicable to the transactions, agreements and acts alleged in the complaint.

SEVENTH DEFENSE

[201] 32. The agreement of consolidation and the actual consolidation of the two banks into First Security pursuant thereto do not constitute an unreasonable restraint of trade within the meaning of Section 1 of the Sherman Act nor a monopoly or an attempt to monopolize, or a combination or conspiracy to monopolize trade or commerce within the meaning of Section 2 of the Sherman Act.

EIGHTH DEFENSE

33. The Court should decline to exercise its equitable powers and grant the relief sought herein because:

A) The Attorney General has requested authority from Congress for the past several years to institute anti-trust proceed-

ings to enjoin mergers and consolidations of banks and Congress has refused to grant the requested authority even though amendments to the applicable statutes have been enacted during such period of time; and

B) The decision of the Executive Branch of the United States has been rendered by the Comptroller of the Currency of the United States, the official specifically authorized by Congress to approve or disapprove mergers and consolidations in the highly specialized and regulated field of banking, and the Attorney General, another official in the Executive Branch, should not be permitted to attack such decision in a collateral proceeding.

WHEREFORE, defendant, First Security, prays that the complaint be dismissed and that judgment be entered for its [202] costs and for all relief to which it may appear entitled.

STOLL, KEENON & PARK,
310 First National Bank Building,
Lexington, Kentucky,
By JAMES PARK,
HARBISON, KESSINGER, LISLE & BUSH,
Security Trust Building,
Lexington, Kentucky,
By RUFUS LISLE,
Attorneys for Defendant, First Security.

[Certificate of service omitted in printing]

* * * * * *

[487] In the United States District Court, Eastern District of Kentucky at Lexington

No. 1424

[File endorsement omitted]
[Title omitted]

Motion of Defendant re Answers to Interrogatories—Filed July 5, 1961

The defendant, First Security National Bank & Trust Company of Lexington, moves the Court for the entry of an Order

concerning its answer to Interrogatories 13 through 16 and 23 through 26 as amended propounded to it by the plaintiff as follows:

1. That the answer to said Interrogatories shall be filed with the Clerk of the Court and upon being filed shall be securely sealed by the Clerk and thereafter said Interrogatory shall be opened only by order of the Court.

2. That the answers to said Interrogatories having been served upon the attorneys for the plaintiff shall not be disclosed by plaintiff to anyone other than employees of the Department of Justice prior to the trial of this action unless leave of court has first been obtained therefor.

3. That such information contained in said answers as is not introduced in evidence during the trial of this action [488] shall thereafter be treated as confidential by the Department of Justice.

STOLL, KEENON & PARK,
310 First National Bank Bldg.,
Lexington, Kentucky.
HARBISON, KESSINGER, LISLE & BUSH,
710 Security Trust Bldg.,
Lexington, Kentucky.
By JOHN L. DAVIS,
Attorneys for Defendant, First Security National Bank & Trust Co. of Lexington.

* * * * *

[495] In the United States District Court for the Eastern District of Kentucky at Lexington

Civil Action No. 1424

[File endorsement omitted]

[Title omitted]

Reply to Defendants' Motion for Protective Order Concerning Answers to Interrogatories 13–16, 23–26—Filed July 13, 1961

Plaintiff would have had no objection to the entry of an order in the terms set forth in defendants' Motion for Protective Order had defendants been willing to stipulate that such

an order would not prevent plaintiff from asking the individuals and businesses identified in said answers such questions relating to their business with defendants as plaintiff deemed necessary to the proper development of its case.

While plaintiff does not believe that its confidentiality obligation would preclude it from asking such questions, it wished to make absolutely certain that this was also defendants' understanding. Accordingly, plaintiff presented to defendants a proposed stipulation which provided that the order would not be deemed applicable to [496] plaintiff's making inquiries of those identified in the interrogatory answers. The stipulation also provided that plaintiff would not disclose to any of the persons and businesses contacted information disclosed by the answers which concerned any other person or business identified in these answers.

Defendants declined to accept such stipulation on the ground that their customers would be so offended by the knowledge that defendants had given plaintiff the information contained in the answers that they would take their business elsewhere. Plaintiff pointed out, however, that defendants' customers must be presumed to know that plaintiff has received such information from defendants, since the interrogatories themselves, as well as defendants' obligation to provide plaintiff with the answers thereto, are matters of public record. Plaintiff nevertheless offered to amend the stipulation by obligating itself to inform each person contacted that defendants had given plaintiff the information concerning such person only under compulsion of law. Defendants' answer was to file the subject Motion. Plainly, therefore, defendants seek by this Motion to require the Government to approach the Court each time it may wish, in the course of its preparation for trial, to contact any of the hundreds of firms and individuals identified in the interrogatory answers.

Plaintiff believes that it cannot reasonably be expected to adequately prepare for trial under such a handicap. It believes that the stipulation described above would have provided a sensible solution to the problem alleged by defendants to exist. Plaintiff believes, in short, that the Government has gone as far towards providing assurances to defendants as it

can, consistent with its obligation to present a proper record of the relevant facts.

[497] Plaintiff therefore objects to defendants' suggested order unless the following proviso is added to paragraph 2 thereof:

> *provided*, that the obligation of confidentiality imposed upon plaintiff shall not be deemed applicable to the making of inquiries by plaintiff of those persons and firms identified in said answers, but plaintiff (1) shall not disclose to any such firm or person any information concerning any other firm or person revealed in said answers, and (2) shall advise each person or firm so contacted that the information concerning such person was given by defendants to plaintiff under compulsion of law."

Respectfully submitted,

/s/ LARRY L. WILLIAMS,
/s/ MELVIN SPAETH,
/s/ GEORGE J. MITCHELL,
/s/ JAY GREENFIELD,
Attorneys, Department of Justice.

[Proof of service omitted in printing]

* * * * *

[581a] [Clerk's certificate to foregoing transcript omitted in printing]

* * * * *

[621] In the United States District Court, Eastern District of Kentucky at Lexington

Civil Action No. 1424

[File endorsement omitted]

[Title omitted]

Order to Treat Answers to Interrogatories Confidential, etc.—October 10, 1961

This cause coming on to be heard on defendant's, First Security National Bank and Trust Company of Lexington, motion

filed July 5, 1961, for an order that its answers to Interrogatories 13 through 16 and 23 through 26, as amended, propounded to it by plaintiff, be sealed and for other protective orders in connection with said interrogatories on the ground that the information requested is of such a highly confidential nature that disclosure of it to the public in general and to defendant's competitors would result in irreparable injury, it is ordered by the Court that the answers which defendant makes to Interrogatories 13 through 16 and 23 through 26, as amended, shall be treated as confidential and that

a. The answers to said interrogatories which are filed with the Clerk of this Court shall be sealed in envelopes to be opened only as directed by the Court;

b. The answers to said interrogatories which are served [622] upon the attorneys for the plaintiff shall be kept confidential by them in the Department of Justice and they shall not be disclosed to anyone other than attorneys in the Department of Justice or their authorized assistants prior to the trial of this action unless leave of the Court has first been obtained therefor;

c. Such information contained in said answers as is not introduced in evidence during the trial of this action shall thereafter be treated as confidential and shall not be disclosed to any person unless leave of the Court has first been obtained therefor.

This cause then came on to be heard on the objections filed by plaintiff on July 17, 1961 to the supplemental interrogatories filed by the defendant. Supplemental Interrogatory No. 32 was withdrawn by the defendant, First Security National Bank and Trust Company of Lexington. The Court being advised, it is now ordered by the Court that plaintiff's objections to said interrogatories are sustained.

This cause then came on to be heard on the objections of the defendant filed July 13, 1961 to plaintiff's additional answers to defendant's interrogatories, and the Court being advised, it is ordered that said objections are overruled as to the answers to Interrogatories 1, 2, 3, 6 and 7. Said objections are sustained [623] to the answer given by the plaintiff to Interrogatory No. 9c, and plaintiff is ordered to supplement its answers

to said Interrogatory No. 9c by giving the names of the persons known to it and who are within the compass of the words "publicly known", as referred to in said answer.

By agreement of the parties, it is ordered that this cause be assigned for trial before the Court without a jury, commencing at 10:00 o'clock A.M., on February 19, 1962, at the Courtroom of the United States Post Office and Courthouse, Lexington, Kentucky.

Oct. 10, 1961.

Approved for entry.

H. Church Ford,
Judge.

George J. Mitchell,
Attorney for Plaintiff.

Stoll, Keenon & Park,
310 First National Bank Bldg.,
Lexington, Kentucky.

Harbison, Kessinger, Lisle & Bush,
Security Trust Bldg.,
Lexington, Kentucky.

By _____
Attorney for Defendant.

• • • • •

[838] In the United States District Court, Eastern District of Kentucky at Lexington

Civil Action No. 1424

[File endorsement omitted]

[Title omitted]

Defendants' Request for Admission of Facts and Genuineness of Documents—Filed January 26, 1962

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, the defendant, First Security National Bank and Trust Company of Lexington, requests the plaintiff, United States of America, within ten (10) days after the service of this request, to make the admissions hereinafter set forth for the purpose of

this action only and subject only to objections as to the relevancy which may be interposed at the trial:

A) That each of the following statements is true:

1) First Federal Savings and Loan Association and Lexington Federal Savings and Loan Association are Federal Savings and Loan Associations chartered under the Federal law, each with an office in Lexington, Fayette County, Kentucky.

[839] 2) New Union Building Association and Peoples Savings Fund and Building Association are State Savings and Loan Associations, chartered under Kentucky law, and each of them has an office in Lexington, Fayette County, Kentucky.

3) Each of the above named Savings and Loan Associations solicits and receives funds from members of the public for investment and issues to such investors evidence, in one form or another, of indebtedness to the investor for the amount of such funds invested.

4) Each of the above mentioned Savings and Loan Associations pays interest semi-annually on June 30 and December 31 of each year for funds that have been invested with it prior to the 10th day of any month before the interest paying date and the current interest paying rate paid by each institution on such savings is:

a) First Federal Savings and Loan Association, 4% per annum;

b) Lexington Federal Savings and Loan Association, 4% per annum;

c) New Union Building Association, 4% per annum;

d) Peoples Savings Fund and Building Association, 5% per annum.

5) Each of the above named Savings and Loan Associations invests the funds that are deposited with it in first mortgage loans secured by mortgages on real estate. The major portion of the real estate mortgage loans made by each of them is secured by mortgages on residential properties. As of December 31, 1960, First Federal Savings and Loan Association had an [840] aggregate of unpaid mortgage loans in force of $15,789,032.84. They had 2,146 mortgage loans in force, and of these approximately 95% of the loans were secured by mort-

gages on residences and about 5% were secured by mortgages on churches, motels and commercial buildings.

6) First Federal Savings and Loan Association makes its mortgage loans for such periods as five, ten, fifteen, twenty and twenty-five years.

7) First Federal Savings and Loan Association is able to make a mortgage loan not in excess of 75% of the appraised value without approval of its Board of Directors and up to 80% of the appraised value with the approval of its Board of Directors.

8) Savings accounts of investors held by First Federal Savings and Loan Association, Lexington Federal Savings and Loan Association, and New Union Building Association are insured by the Federal Savings and Loan Insurance Corporation for a maximum of $10,000.00. Savings accounts of Peoples Savings Fund and Building Association are not insured.

9) Most of the loans made by Lexington Federal Savings and Loan Association are conventional loans, and on newly constructed residences they average lending about 75% of the purchase price. On older residential property, they average lending about 70% of the purchase price.

10) As of May 31, 1961, Lexington Federal Savings and Loan Association had loans by number and dollar volume outstanding as follows:

[841] a) Mortgage loans insured by FHA—139, with a total dollar volume of $111,369.40;

b) Mortgage loans insured are guaranteed by VA—61 loans, with a dollar volume of $500,728.86;

c) Conventional loans—896, with a dollar volume of $14,692,661.47.

11) Lexington Federal Savings and Loan Association makes some loans in each of the following categories:

a) Loans secured by mortgages on apartment houses of more than 4 family units;

b) Loans secured by mortgages on churches;

c) Loans secured by mortgages on nursing homes;

d) As of May 31, 1961, it had a mortgage loan on a printing plant in Lexington;

e) As of May 31, 1961, Lexington Federal Savings and Loan could place no more than 20% of its assets in all of the above listed loans;

f) The average length of time for which Lexington Federal Savings and Loan Association makes a mortgage is between 15 and 20 years.

12) Almost 100% of the loans of New Union Building Association are made on residential property and generally on a one-family house.

13) Most of the loans of New Union Building Association are made to pay out over a period of 11 years and 7 months.

14) No loans are made by New Union Building Association to borrowers or on property outside of Fayette County.

[842] 15) New Union cannot make a loan to a borrower for more than 70% of the appraised value of the property.

16) The average size loan made by New Union Building Association to a borrower is approximately $6,000.00.

17) Most of the loans made by Peoples Savings Fund and Building Association are secured by mortgages on Residential property.

18) All loans held by Peoples Savings Fund as of October 9, 1961, except one were on properties located in Fayette County, Kentucky.

19) The average loan made by Peoples Savings Fund and Building Association is made to pay out in a period of approximately 13½ years. Peoples cannot make a mortgage loan to any one borrower in excess of $20,000.00, and it will not lend more than 75% of the appraised value of the property. The average size loan of peoples is approximately $3,500.00.

20) Approximately 95% of the dollar volume and number of loans made by Peoples are secured by mortgages on residential property. The remaining 5% are made to churches and hospitals.

21) Each of the above mentioned Savings and Loan Associations are entitled, under their contracts with their investors, to require them to wait 60 days after notice to withdraw their savings from the institution, but as a matter of practice all of them presently pay upon demand. This practice or custom has been in effect for several years.

22) Charles L. Watson, Jr. maintains an office in the Bank of Commerce Building, Lexington, Kentucky, and he is a [843] supervising appraiser for The Prudential Insurance Company of America in the matter of mortgage loans and real estate investments. He appraises real estate and makes first mortgage loans for Prudential in 43 counties in Kentucky, including Fayette County, on behalf of Prudential Insurance Company. He makes residential loans, commercial loans, commercial loans and farm loans.

23) Conventional residential loans made for Prudential are made for an original term of from 20 to 25 years. Farm loans are made primarily over a 20 year period. Conventional apartment house loans are made for a period of between 15 and 16⅔ years. Conventional industrial and commercial loans are made generally for a 15 year term, although some are made for 10 years. Current interest rates charged by Prudential on their different types of loans vary according to the type of loan and the period for which it is made from 5¼% to 6%.

24) Central Kentucky Mortgage Company, Inc. acts as a mortgage loan correspondent or broker for permanent investors in residential, commercial and industrial loans. The permanent investors that Central Kentucky Mortgage Company permanently acts as correspondent or broker for are:

a) Aetna Life Insurance Company;

b) John Hancock Mutual Life Insurance Company;

c) Liberty National Life & Accident Insurance Company, Birmingham, Alabama;

d) National Life & Accident Insurance Company;

[844] e) Life Insurance Company of Georgia; and

f) Monumental Life Insurance Company of Baltimore, Maryland.

25) In order to obtain the original money to disburse to the borrower on making the loan, Central Kentucky Mortgage Company has credit lines with various banks who advance the money initially to use in making the loan. As these loans are sold to a permanent investor, the banks are paid off and Central Kentucky Mortgage Company services each mortgage loan by collecting periodic payments to be made thereon and remitting

the same to the permanent investor after deducting its percentage fee for its services.

26) Prior to the merger of First National Bank and Trust Company and Security Trust Company, Central Kentucky Mortgage Company had credit lines with First National, Security, Bank of Commerce, and Citizens Union National Bank and Trust Company. The amount of its credit line with First National was $250,000.00 and its credit line with Security was $200,000.00. Local bank financing was insufficient to satisfy the credit needs of Central Kentucky Mortgage Company and it had additional credit lines with banks outside Lexington as follows:

a) First Lincoln National Bank, Louisville, Kentucky—$200,000.00;

b) First National Bank, Boston, Mass.—$400,000.00;

c) Peoples National Bank, Paducah, Kentucky—$100,000.00.

[845] 27) During 1960, Central Kentucky Mortgage Company had approximately 2,750 loans outstanding of a total dollar volume of approximately 30 million dollars. Approximately 65% of the number and of the total dollar volume of these loans were loans made to borrowers in Fayette County, Kentucky. About 2% of the number and dollar volume of outstanding loans held by Central Kentucky Mortgage Company were commercial loans. The remainder were residential mortgage loans.

28) The average maturity of loans made by Central Kentucky Mortgage Company is 21 to 23 years. However, it does make a few loans with a 10 year maturity and some with as high as a 30 year maturity.

29) Borrowers through Central Kentucky Mortgage Company pay 5¾% interest on conventional loans and 5¼% on guaranteed loans.

30) Approximately 60% of the number and dollar volume of loans of Central Kentucky Mortgage Company are guaranteed and insured loans and approximately 40% are conventional loans.

31) An average of 95% of the VA and GI loans are made for 100% of the appraisal price of the property. The average

FHA loan is made for 93% of the appraisal value of the property. Conventional loans are made for no more than 75% of the sales price or the appraisal value, whichever is lower.

32) The Federal Land Bank Association of Lexington is a Farmers' Cooperative and its primary purpose is to lend money to farmers, secured by mortgages on their farms for any number of purposes, including the purchase or improvement of farm land and buildings. The Federal Land Bank Association of Lexington [846] maintains an office at 620 South Broadway, Lexington, Kentucky.

33) As of December 31, 1960, the Federal Land Bank Association of Lexington had 89 loans outstanding, with a total unpaid balance of $1,705,195.87, all to borrowers in Fayette County, Kentucky.

34) A majority of the loans made by Federal Land Bank Association of Lexington are made for periods from 20 to 40 years. The interest rate charged for its loans varies from 4½% to 6%.

35) The Federal Land Bank Association of Lexington also makes loans in Jessamine, Woodford, Scott, Bourbon and Harrison Counties in Kentucky. In all of the counties in which it operates, the Federal Land Bank Association of Lexington, as of December 31, 1960, had 326 loans outstanding, with a total unpaid balance of $4,663,641.00.

36) The Federal Land Bank Association of Lexington can lend from 45% to 50% of the current market value of the property involved.

37) College of the Bible located on South Limestone Street in Lexington, Kentucky, has certain endowment funds which it invests in first mortgages on real estate.

38) As of July 31, 1960, College of the Bible had in outstanding mortgage loans a dollar volume of $261,921.39.

39) Mortgage loans made by College of the Bible are set up to be amortized over a period of 10 years and the interest rate charged on its loans is 6%.

[847] 40) College of the Bible makes most of its mortgage loans for 50% of the appraised value of the property, and it rarely if ever makes a loan for more than 60% of the appraised value.

41) Transylvania University maintains a general investment fund which it uses to invest in first mortgages on real estate.

42) All of the mortgage loans held by Transylvania University as of August 31, 1960, with the exception of a mortgage on a farm in Jessamine County were on properties located in Fayette County, Kentucky.

43) The term of the loans made by Transylvania University is from about 8 to 15 years, and the interest rate charged on its loans is 6%. Most of the loans of Transylvania are made at from 60% to 70% of the appraised value of the property.

44) Franklin Pioneer Corporation acts as a mortgage loan correspondent or broker, and it maintains an office in Lexington, Kentucky, at 150 Market Street, Lexington, Kentucky. It acts as a mortgage loan correspondent or broker for:

a) Pennsylvania Mutual Life Insurance Company;
b) Commonwealth Life Insurance Company;
c) Ohio State Life Insurance Company;
d) Lincoln National Life Insurance Company;
e) Northwest National Life Insurance Company;
f) Kansas City Life Insurance Company;
g) Berkshire Life Insurance Company; and
h) United Insurance Company;
[848] i) Federal National Mortgage Association;
j) The Prudential Insurance Company of America;
k) American Irving Savings Bank;
l) Providence Institute for Savings;
m) United Life & Accident Insurance Company;
n) Paul Revere Life Insurance Company;
o) Cayuga Federal Savings & Loan Association, Philadelphia, Pa.; and
p) Numerous other small institutions which hold minimal amounts of loans services by Franklin Pioneer.

45) At the present time the interest rate charged by Franklin Pioneer on its loans is 6%. The average term of the loans made by it would be 20 years, but it does make loans for terms of 10 years, 15 years, 25 years and 30 years.

46) As of December 31, 1960, Franklin Pioneer had 1485 loans outstanding, of a total dollar volume of $13,732,456.00.

As of December 31, 1960, it had the following loans outstanding in counties adjacent to Fayette County:

a) In Georgetown, Kentucky—11 loans for $77,903.00;
b) In Paris, Kentucky, 19 loans for $138,463.00;
c) In Richmond, Kentucky—6 loans for $39,872.00;
d) In Versailles, Kentucky—19 loans for $185,314.00;
e) In Wilmore—3 loans for $20,327.00; and
f) In Winchester—22 loans for $196,247.00.

[849] 47) Franklin Pioneer services the loans that it makes and sells to its permanent investors, and its compensation for such is a percentage of the original loan and each payment that is made thereon.

48) Approximately 95% of the amount and dollar volume of the loans made by Franklin Pioneer are secured by mortgages on residences.

49) Pearce Mortgage Company maintains an office at 161 South Limestone Street, Lexington, Kentucky. It acts as mortgage loan correspondent for Northwest Life Insurance Company and as agent for:

a) New York Life Insurance Company;
b) Jefferson Standard Life Insurance Company;
c) Equitable Life Assurance Society of America;
d) American National Insurance Company; and
e) Massachusetts Mutual Life Insurance Company.

50) The current interest rates charged on loans made by Pearce Mortgage Company, on insured loans, is 5¼% and on conventional loans is 5¾% to 6%.

51) Pearce Mortgage Company does not service any of its loans for any of its investors.

52) In the year 1960, Pearce Mortgage Company closed loans for a total dollar volume of $752,950.00. In 1960 it closed 24 construction loans for $240,000.00. In 1959, it closed permanent loans for $2,144,850.00 and 24 construction [850] loans for $240,000.00. In 1958, it closed 79 construction loans for $790,000.00 and other loans with a dollar volume of $2,277,950.00.

53) The average term of FHA loans made by Pearce Mortgage Company is 25 years. On conventional loans, 75% of them are made for 25 years and 25% of them are made for 20 years.

54) About 50% of the loans closed by Pearce Mortgage Company are insured by FHA or VA and about 50% are conventional.

55) William K. Redman as an individual operates Redman Mortgage Company. It maintains an office in Lexington, Kentucky, and operates as a mortgage correspondent for:

a) The Farm Department of Prudential Insurance Company;

b) Kansas City Life Insurance Company;

c) Ohio National Life Insurance Company;

d) American National Life Insurance Company; and

e) Equitable Life Assurance Society of the United States.

It makes farm and commercial loans in Fayette County, Kentucky.

56) In 1960, Redman Mortgage Company made loans secured by mortgages on property of a total dollar volume of $765,000.00. Eight of these were farm loans for $740,000.00 and one was a loan on city property for $25,000.00.

57) In 1959 Redman Mortgage Company made 10 farm loans for $594,000.00 and one city loan on property located in Lexington for $10,500.00.

[851] 58) Of the farm loan made in 1960, 4 of them for $380,000.00 were made on farms located in counties adjacent to Fayette County.

59) Of the loans made on farms in 1959, $423,000.00 were made on farms located in counties adjacent to Fayette County.

60) All of the above mentioned farm loans were secured by a first mortgage on the farm and the term of the loan was generally for 20 years. The interest rate of these loans was from 5% to 6% per annum.

61) Redman Mortgage Company also makes and services loans secured by mortgages on commercial and business property, and in 1961 it was servicing 43 such loans then in effect.

62) Generally, the investors represented by Redman Mortgage Company do not make loans for more than two-thirds of the appraised value of the property.

63) As of January 1, 1961, the total unpaid principal balances of the 43 loans serviced by Redman Mortgage Company was $1,270,500.00.

64) Realty Mortgage Company maintains an office at 156 Market Street, Lexington, Kentucky, and it acts as a correspondent or agent in making and servicing mortgage loans for the following:

a) Mutual Life Insurance Company of New York;
b) Western & Southern Life Insurance Company;
c) Midland Mutual Life Insurance Company;
d) Penn Mutual Life Insurance Company;
e) Central Life Insurance Company;
f) East River Savings Bank of New York;
g) Philadelphia Savings Fund Society;
[852] h) Dollar Savings Bank of New York;
i) Bronx Savings Bank of New York;
j) City Savings Bank of Brooklyn, New York;
k) Providence Institution for Savings, Providence, R.I.;
l) Union Trust Company of Rochester, New York.

65) As of December 31, 1960, Realty Mortgage Company had 3,135 first mortgage loans and 78 second mortgage loans, or a total of 3,213 mortgage loans of a total dollar volume of $30,322,813.61.

66) Realty Mortgage Company has credit lines with Commercial banks who advance to it initially the money necessary to use in closing its loans, and thereafter these mortgage loans are sold to permanent investors and the proceeds therefrom are used to pay the banks for the money they advance in making the loans.

67) The loans made by Realty Mortgage Company are made for periods from 20 to 30 years, and the average length of all loans is approximately 25 years. The current interest rate on conventional loans was 5¾% and 6% and also on mortgage loans insured by FHA or VA it is 5¼%.

68) As of May 31, 1961, Realty Mortgage Company was servicing mortgage loans of a total dollar volume of $34,164,449.91.

69) The above mentioned total of mortgage loans of Realty Mortgage Company includes some loans in towns around Lexington and some from an office that was recently opened in Louisville, Kentucky.

[853] 70) Reality Mortgage Company is compensated for the loans that it makes in the same manner that all other local mortgage correspondents or brokers are compensated.

71) An estimate of the dollar volume of the Government guaranteed loans being serviced by Realty Mortgage Company in 1960 is as follows:

a) $500,000.00 for Western & Southern;

b) $2,678,119.00 for Mutual Life Insurance Company of New York;

c) $3,896,767.01 for East River Savings Bank;

d) $3,000,000.00 for Philadelphia Savings Fund Society;

e) $2,510,000.00 for Dollar Savings Bank;

f) $2,000,000.00 for Midland Mutual Savings Company;

g) $2,074,888.74 for Bronx Savings Bank;

h) $1,000,000.00 for Penn Mutual Life Insurance Company;

i) $2,156,853.22 for F.N.M.A.;

j) $1,278,852.79 for City Savings Bank;

k) $889,727.00 for Providence Institution for Savings.

72) Kentucky Growers Insurance Company maintains an office at 139 Market Street, Lexington, Kentucky, and it invests some of its funds in first mortgage loans on real estate.

73) As of December 31, 1960, Kentucky Growers Insurance Company had mortgage loans outstanding on properties in Fayette County, Kentucky, with a total balance of $237,212.41.

74) The loans made by Kentucky Growers Insurance Company are made for 10 years, and the current interest rate charged by them is 4½% to 5% per annum.

[854] 75) The mortgages outstanding as of December 31, 1960, of Kentucky Growers Insurance Company were all on residential properties in Fayette County, Kentucky.

76) Kentucky Female Orphans' School, which is located at Midway, Kentucky, maintains an office in the Central Bank Building in Lexington, Fayette County, Kentucky, through which it makes first mortgage loans on real estate located in Central Kentucky.

77) As of June 30, 1960, Kentucky Female Orphans' School had loans outstanding on Fayette County properties of a total dollar volume of $781,194.00.

78) The term of the loans made by Kentucky Female Orphans' School is 5 years and the current interest rate charged by them is 6% per annum.

79) The total outstanding dollar volume of all mortgage loans held by Kentucky Female Orphans' School as of June 30, 1960, was $2,016,462.23.

80) Approximately three-fourths of the total loans outstanding of Kentucky Female Orphans' School are secured by mortgages on residences. Nine-tenths of the remaining ¼ of their total loans are secured by mortgages on farm properties.

81) Kentucky Female Orphans' School will not lend more than 50% of the appraised value of the property to a borrower.

82) W. H. Smith, an attorney whose offices are in Central Bank Building, Lexington, Kentucky, operates a wholly owned [855] company known as "Phoenix Mortgage Company," which makes and services loans for Life & Casualty Insurance Company of Nashville, Tennessee. Phoenix Mortgage Company makes and services the loans it makes on residential property, and it makes loans on commercial properties but it does not service such loans.

83) In the past 21 years, Phoenix Mortgage Company has made loans secured by mortgages on commercial properties of a total volume of approximately $800,000.00 and approximately $400,000.00 remains outstanding on these loans as of this time. The commercial loans are made for periods from 15 to 20 years and the interest rate is from 4% to 5% on such loans.

84) As of December 31, 1960, Phoenix Mortgage Company was servicing mortgage loans on residential properties which had an outstanding dollar volume of $1,117,083.99.

85) The residential mortgage loans made by Phoenix Mortgage Company are amortized over periods ranging from 12 to 20 years and the interest rate on these outstanding mortgages varies from 4% to 6%.

86) John G. King maintains an office at 125 Cheapside, Lexington, Kentucky, and he acts as a mortgage correspondent or broker in making and servicing loans for Mutual Benefit Life Insurance Company, secured by mortgages on farms. John G. King makes such loans in an area consisting of 40 counties in Kentucky, which includes Fayette County.

87) The term of the loans made by John G. King varies from 15 to 20 years.

[856] 88) As of December 31, 1960, John G. King was servicing loans secured by mortgages on farms located in Fayette County, Kentucky, which had an aggregate outstanding balance of $1,251,416.68. The current interest rate made by John G. King is 5½%.

89) Central Baptist Hospital Credit Union is a Federal Credit Union which maintains an office in Central Baptist Hospital, Nicholasville Road, Lexington, Kentucky.

90) As of December 31, 1960, Central Baptist Hospital Credit Union had total loans outstanding of $16,732.94, and 139 share accounts representing savings of its members of $15,228.84.

91) In the year 1960, Central Baptist Hospital Credit Union made 133 loans of a total dollar volume of $133,124.18. Since its organization in 1954 it has made a total of 855 loans, of a total dollar volume of $68,176.40.

92) Central Baptist Hospital makes unsecured loans, with a maximum maturity of 36 months and an average maturity of 18 months. It charges 1% per month on the balance of the unpaid loans. Each borrower is required to purchase one share in the Credit Union.

93) As of October 11, 1961, the largest loan outstanding of Central Baptist Hospital Credit Union was for $1,171.00, and

the average of a loan is from $100.00 to $600.00. It will not accept a deposit from a member for more than $2,000.00. Its shares are insured with CUNA Mutual Insurance. It has paid semi-annual dividends for two years. Membership in the Credit Union is restricted to employees of Central Baptist Hospital.

[857] 94) Fayette County Schools Federal Credit Union is a Federal Credit Union which maintains an office at 400 Lafayette Drive, Lexington, Kentucky. As of December 31, 1960, it had loans outstanding for a total amount of $36,194.51. As of December 31, 1960, it had a total of $50,430.58 in 250 share accounts of its members.

95) In 1960, Fayette County Schools Credit Union made a total of 141 loans for a lotal of $58,428.00. Since its organization in February, 1956, it has made 428 loans for a total of $153,012.11.

96) The loans made by Fayette County Schools Credit Union may be secured by mortgages on automobiles and furniture, but none of them are secured by mortgages on real estate. The maximum term of any loan is 36 months and the average term is 12 months. The interest payable is 1% per month on the unpaid balance. As a matter of practice, the maximum loan made by it is $1,500.00 and the average loan is for $300.00. In 1960, it paid a dividend of 4½%.

97) The maximum deposit that it will accept from any one investor is $2,000.00. Its depositors are insured by CUNA Mutual Insurance. Only employees of the Fayette County School System are eligible for membership in the Credit Union.

98) Central Kentucky Production Credit Association maintains an office at 620 South Broadway, Lexington, Kentucky, and its primary purpose is to make loans to farmers for short and intermediate terms. Most of its loans are made to take care of operating expenses, the purchase of livestock or farm [858] equipment, and some for capital improvements. It is not permitted to make a loan with a maturity of more than 5 years and its loans normally mature at the end of the crop season, or when cattle are to be sold. It charges 6% interest on its loans.

99) As of October 5, 1961, Central Kentucky Production Credit Association had 108 loans outstanding of a total volume of $462,807.25.

100) All borrowers from Central Kentucky Production must be engaged in farming, but it makes loans to farm tenants as well as farm owners. There is no size limitation on loans it may make. The average size loan made by it is $5,000.00. It is permitted to make loans secured by mortgages on real estate, but most of its loans are not so secured.

101) Laclede Bond and Mortgage Company maintains an office in the Central Bank Building in Lexington, and it originates and sells mortgage loans to permanent investors and services these loans to permanent investors and services them until they are paid. It represents four permanent investors who are:

a) Metropolitan Life Insurance Company;
b) Life Insurance Company of Virginia;
c) Washington National Life Insurance Company; and
d) Federal National Mortgage Association.

102) In the year 1960, Laclede Bond and Mortgage Company made mortgage loans in Fayette County, Kentucky, in the aggregate sum of $839,450.00. In 1959, it made mortgage loans in Fayette County in the aggregate sum of $368,900.00. For the first 9 months of 1961, it made mortgage loans in Fayette County, in an aggregate amount of $905,850.00. Laclede Bond and Mortgage Company has a total of between 5 million and 6 million dollars outstanding in mortgage loans in Fayette County, Kentucky.

[859] 103) The majority of the loans made by Laclede Bond and Mortgage Company are secured by mortgages on residences, but occasionally it makes a loan secured by a mortgage on commercial property of apartment houses. Interest rates on mortgages insured by the VA or FHA vary from 5¼% to 5¾%, and the interest rate on conventional loans from 5½% to 6%. The interest rate on all apartment or commercial property loans is 6%.

104) The term for most FHA and GI loans is 30 years. For most of the conventional loans, the term is 25 years, but a few

have been made for 15 to 20 years. The term for commercial loans is usually negotiated and it runs anywhere from 7 to 20 years. The office of Laclede Bond and Mortgage Company, located in Lexington, makes no loans on properties outside of Fayette County.

105) General Motors Acceptance Corporation maintains an office on Southland Drive in Lexington, Kentucky. It discounts or buys negotiable notes and chattel mortgages or conditional sales contracts from General Motors dealers for about 15 counties in Central Kentucky, including Fayette County.

106) As of May 31, 1961, the Lexington office of General Motors Acceptance Corporation had outstanding the following loans by counties: Fayette County, $3,480,320.00; Clark County, $1,023,690.00; Bourbon County, $958,985.00; Jessamine County, $238,493.00; Scott County, $378,281.00; Woodford County $174,544.00.

107) The maximum term for a loan for new cars is 36 months and the average term on loans on new cars is 31 months. On used cars, the normal term is 1 year and the maximum term is 30 months.

108) The Lexington office of GMAC also discounts or buys commercial papers secured by chattel mortgages on Frigidaire appliances.

[860] 109) The Lexington Herald-Leader Credit Union maintains an office in Lexington, Kentucky, and its membership is composed entirely of employees of the Lexington Herald-Leader. It is a State Credit Union and it is supervised and examined by the Department of Banking of the State of Kentucky. It has been in existence since October 14, 1940, and it makes loans to its members of from $300.00 to $10,000.00. Its loans may be secured by chattel mortgages on automobiles, shares in the Credit Union or mortgages on real estate. Its loans which are secured by chattels bear interest at the rate of 1% per month on the unpaid balance, and its loans which are secured by mortgages on real estate bear interest at the rate of 6% per annum. Its loans which are secured by mortgages on real estate may be made for as long as 15 years. However, the majority of its loans are made for a maturity of 3 years.

110) As of December 31, 1960, the Lexington Herald-Leader Credit Union had total assets of $337,460.88. These assets consisted of outstanding loans of $263,144.97, cash in bank of $26,659.43, investments of $45,691.87, prepaid expenses of $1,031.60 and interest receivable, $933.01. As of December 31, 1960, the savings of its members held by the Credit Union were $301,172.47. The savings of its members are withdrawable by them at any time.

111) As of October 12, 1961, Lexington Herald-Leader Credit Union had approximately 65 real estate loans outstanding [861] of a total dollar volume of $110,000.00. In 1960, it made 268 loans of all kinds of a total dollar volume of $205,979.42. The maximum loan that the Credit Union makes is $10,000.00, and the average size loan that it makes is $1,000.00. On its real estate loans, it will not lend more than 60% of the appraised value of the property and it lends on nothing but residential property. The term of its real estate loans vary from 5 to 15 years, and the average term is 10 years.

112) Dixie Cup Credit Union maintains an office in Lexington, Fayette County, Kentucky, and it is a State Credit Union which is supervised and examined by the Kentucky Department of Banking. This Credit Union has been in existence since May 19, 1961, and as of October 12, 1961 it had 76 members. As of September 30, 1961, it had total assets of $3,225.50 and 15 loans outstanding of a total dollar volume of $2,410.45. The maximum that it will loan to any one borrower is $300.00, and the maximum deposit that it will accept from any member is $2,000.00. Its deposits are insured by CUNA.

113) Square D Credit Union maintains its office in Lexington, Fayette County, Kentucky, and it is a Federal Credit Union. The Credit Union charges 1% per month on the unpaid balance on loans that it makes. The savings of its members may be withdrawn at any time upon demand.

114) As of December 31, 1960, the total assets of Square D Credit Union were $610,810.71. As of that date, it had [862] outstanding loans to members of $507,956.56. As of that date, the savings of its members totalled $514,741.08. As of December 31, 1960, it had 1,334 members.

115) The loans made by Square D Credit Union may be either secured or unsecured as its credit committee determines. The maximum maturity for its loans is 5 years, and the average maturity is somewhere between 18 and 24 months. The average size of its loans is somewhere beteewn $500.00 and $1,000.00.

116) The Lexington Signal Depot Employees Credit Union is a State Credit Union and it maintains its office at the Lexington Signal Depot in Fayette County, Kentucky. Its membership is restricted to the employees of the Lexington Signal Depot. Members of the Credit Union are free to withdraw their savings at any time upon demand. The interest rate charged by it on its loans is 1% per month on the unpaid principal balance. The term of its loans never exceeds 36 months. As of June 30, 1961, this Credit Union had $1,012,029.25 in loans outstanding to its members. As of the same date, it had $197,-242.04 in investments, and $126,911.61 on deposit in banks and $20,000.00 in cash. As of the same date, the savings of its members totalled $1,239,393.01. As of June 30, 1961, it had 2,074 members. It requires security for all loans over $300.00 and it has made no loans in excess of $4,000.00. The average loan made by it is about $1,000.00. It will not accept deposits from its members in excess of $10,000.00.

[863] 117) Good Samaritan Hospital Federal Credit Union maintains its office at Good Samaritan Hospital in Lexington, Fayette County, Kentucky. As of December 1, 1960, it had outstanding in total loans $42,160.11. As of the same date the savings of its members amounted to $41,078.51. It had 305 share accounts as of December 31, 1960, and during the year 1960 it made a total of 253 loans for a total of $76,475.43. Since organizing in 1955 it has made a total of 972 loans for a total dollar volume of $219,151.61. The maximum maturity for any of its loans is 3 years and the average maturity is from 16 to 18 months. Its interest charge on loans is 1% per month on the unpaid principal balances.

118) I.B.M. Federal Credit Union maintains an office in Lexington, Fayette County, Kentucky. As of December 31, 1960, it had $53,237.36 outstanding in loans to its members. As of the same date, the savings of its members amounted

to $57,709.91. As of the same date it had 597 members. During the year 1960 it made 351 loans for a total dollar volume of $94,174.26. As of September 30, 1961, it had a total of all outstanding loans of $166,174.01 and a total savings of all of its members of $150,800.83. It charges 1% per month interest rate on the outstanding balance owing by its borrowers in each month. The maximum period for which it may make a loan is 5 years and the average maturity of all of its loans is 18 months. The largest loan it has ever made is $3,700.00 and the average size of its loans is $400.00.

[864] 119) The USPH Federal Credit Union maintains its office at the United States Public Health Service Hospital, Leestown Road, in Fayette County, Kentucky, and its membership is composed of employees of the United States Public Health Service Hospital. The maximum period for which it may make a loan is five years, and a majority of their loans are made for a period of 36 months. It charges 1% per month on the unpaid principal balance as interest on its loans. As of December 31, 1960, it had 277 loans outstanding for a total dollar volume of $229,522.85. The total value of its savings of its employees as of that date was $271,571.04. During the year 1960 it made 381 loans for a total of $325,155.86. The maximum deposit that it will accept from any one employee is $2,000.00.

[865] B) That each of the attached documents are genuine, and that the facts and figures stated thereon are true and correct. Copies of said documents are attached hereto and made a part hereof and the same are identified marked for identification as follows:

1) Exhibit "A"—Statement of Condition of Lexington Federal Savings and Loan Association as of 6/30/61.

2) Exhibit "B"—Statement of Condition of Peoples Savings Fund and Building Association as of 6/30/61.

3) Exhibit "C"—Statement of Condition of First Federal Savings and Loan Association of Lexington as of 6/30/61.

4) Exhibit "D"—Statement of Condition of New Union Building Association as of 6/30/61.

5) Exhibit "E"—Statement of Condition of Peoples Savings Fund and Building Association as of 12/31/60.

6) Exhibit "F"—Statement of Condition of New Union Building Association as of 12/31/60.

7) Exhibit "G"—Statement of Condition of First Federal Savings and Loan Association of Lexington as of 12/31/60.

8) Exhibit "H"—Statement of Condition of Lexington Federal Savings and Loan Association as of 12/31/60.

9) Exhibit "I"—Statement of Condition of IBM (Lexington) Employees Federal Credit Union as of December 31, 1960.

10) Exhibit "J"—Statement of Condition of USPHLE Federal Credit Union as of December 31, 1960.

11) Exhibit "K"—Annual Report of Square D Federal Credit Union as of December 31, 1960.

[866] 12) Exhibit "L"—Financial and Statistical Report of GSH Federal Credit Union as of 12/31/60.

13) Exhibit "M"—Financial and Statistical Report of Fayette County Schools Federal Credit Union as of 12/31/60.

14) Exhibit "N""—Annual Report of Herald-Leader Employees Credit Union as of 12/31/61.

15) Exhibit "O"—Report of Condition of L.S.D. Employees Credit Union as of 6/30/61.

16) Exhibit "P"—Letter of October 2, 1961 of N. D. Harper, Manager, General Motors Acceptance Corporation, to John L. Davis.

17) Exhibit "Q"—Financial and Statistical Report of USPHLE Federal Credit Union as of 6/30/61.

18) Exhibit "R"—Letter of Prudential Insurance Company of America dated June 28, 1961 to C. R. Watson, Jr. and enclosure thereto.

19) Exhibit "S"—Letter of Prudential Insurance Company of America dated June 16, 1961 to C. R. Watson.

20) Exhibit "T"—Report of Members and Amount of Loans Disbursed by Offices for the Months and Period Ending December 31, 1959 and 1960 of Central Kentucky Production Credit Association.

STOLL, KEENON & PARK,
310 First National Bank Bldg.,
Lexington, Kentucky.
By GLADNEY HARVILLE,
Attorneys for Defendant.

[867] [Certificate of service omitted in printing]

[868] In the United States District Court, Eastern District of Kentucky at Lexington

Civil Action No. 1424

[Title omitted]

Plaintiff's Request for Admission of Facts—Filed January 30, 1962

Please take notice that the plaintiff hereby requests the defendants, pursuant to Rule 36 of the Federal Rules of Civil Procedure, to admit within 10 days after service of this request, for the purposes of the above-entitled action only, and subject to all pertinent objections to admissibility which may be interposed at the trial, the truth of the facts set forth in paragraphs (1) through (193) attached hereto.

/s/ LARRY L. WILLIAMS,
/s/ LAWRENCE F. NOBLE,
Attorneys, Department of Justice.

[File endorsement omitted]

[869] (1) Defendant First National Bank and Trust Company of Lexington (First National) was a national banking association organized under the laws of the United States with its principal place of business in Lexington, Kentucky.

(2) Defendant Security Trust Company (Security Trust) was a state bank organized under the laws of the State of Kentucky with its principal place of business in Lexington, Kentucky.

(3) Defendant First Security National Bank and Trust Company of Lexington (First Security) is a national banking association resulting from the consolidation of First National and Security with its principal place of business in Lexington, Kentucky.

(4) Prior to the consolidation First National maintained correspondent relationships with banks in states other than Kentucky and conducted other banking business with customers in other states, and its checking accounts customers

used its checks to effect purchases from sellers located in states other than Kentucky. In conducting its banking business First National regularly utilized the United States mails and interstate telephone and telegraph.

(5) Prior to the consolidation Security Trust maintained correspondent relationships with banks in states other than Kentucky, and conducted other banking business with customers in other states. Its checking account customers used its checks to effect purchases from sellers located in states other than Kentucky. In conducting its banking business First National regularly utilized the United States mails and interstate telephone and telegraph.

(6) First Security maintains correspondent relationships with banks in states other than Kentucky, and conducts other banking business with customers in other states, and its checking account customers use its checks to effect purchases from sellers located in states other than Kentucky. In conducting its banking businesses First Security utilizes the United States mails and interstate telephone and telegraph.

[870] (7) The First National Bank and Trust Company of Lexington was organized in 1929 as a consolidation of the Phoenix National Bank and Trust Company and the First And City National Bank, both of Lexington. In 1931 it assumed control and management of the Fayette National Bank and all assets of both banks were transferred to First National in 1933.

(8) Prior to the consolidation First National conducted a general commercial banking business through four offices, all of which were located in Fayette County, Kentucky.

(9) As of December 31, 1960, First National was the largest bank in Fayette County with total assets of $65,069,000, total deposits of $58,673,000 and total net loans and discounts of $35,434,000.

(10) Security Trust was incorporated in 1886 as the Security Trust and Safety Vault Company and in 1907 adopted the title of Security Trust Company.

(11) Prior to the consolidation Security Trust conducted a general commercial banking business through two offices, both of which were located in Fayette County, Kentucky.

(12) As of December 31, 1960 Security Trust had total assets of $21,023,000, total deposits of $17,402,000 and total net loans and discounts of $12,317,000.

(13) First Security was organized on March 1, 1961 as a result of the consolidation of First National and Security Trust.

(14) First Security conducts a general commercial banking business through six offices, all of which are located in Fayette County, Kentucky.

(15) As of December 31, 1960 First National and Security Trust had combined total assets of $86,102,000, combined total deposits of $76,075,000, and combined total net loans and discounts of $47,751,000.

[871] (16) The merger between First National and Security Trust was first suggested in 1957. On July 23, 1957, a Committee of the Board of Directors of First National was appointed to work out matters pertaining to the proposed merger.

(17) In a letter of officials of both banks on August 13, 1957, Ira J. Porter of the Louisville Trust Company, Louisville, Kentucky, suggested a basis for consolidation.

(18) The matter was considered by officials of both banks but negotiations were discontinued when an equitable basis for consolidation could not be agreed upon.

(19) Early in 1960, negotiations were resumed at the instance of First National, which appointed a committee to take steps toward reopening negotiations.

(20) During the course of the renewed negotiation, it was decided to enlist the aid of a larger bank in accomplishing the merger. Because of previous associations which it enjoyed with both First National and Security Trust and because it had recently had experience with merger problems in its own interest The Morgan Guaranty Trust Company of New York was requested to assist in arriving at a fair basis for consolidation.

(21) On August 9, 1960, The Morgan Guaranty Trust Company submitted its report to officials of both banks recommending a basis of consolidation. On October 13, 1960, a supplemental report was submitted by Morgan Guaranty.

(22) The proposed plan of consolidation was approved by the Board of Directors of First National on November 22,

1960, and by the Board of Directors of Security Trust on November 28, 1960.

(23) On December 1, 1960, the Application for Approval to Consolidate and the Agreement of Consolidation were filed with the Comptroller of the Currency. The Agreement of Consolidation was [872] approved by the shareholders of both banks on January 10, 1961.

(24) Pursuant to the provisions of Section 18(c) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1828 (c)), the Comptroller of the Currency requested and received reports concerning the competitive factors involved in the proposed merger from the Board of Governors of the Federal Reserve System, the Attorney General, and Federal Deposit Insurance Corporation, all of which concluded that the effect of the proposed consolidation of competition would be adverse.

(25) Officials of both banks realized that the Department of Justice would file suit to prevent consummation of the consolidation if the Comptroller approved the proposed consolidation.

(26) The Comptroller of the Currency approved the proposed merger on February 27, 1961.

(27) The consolidation of First National and Security Trust became effective March 1, 1961. The complaint in this action was filed on the same date.

(28) The major functions of commercial banks, including those in Fayette County, are the acceptance and creation of demand deposits and the making of loans to individuals, partnerships, corporations, and other borrowers. They also accept time and savings deposits, engage in trust functions, supply currency to the public and maintain safe-deposit facilities, and provide other services.

(29) Since the major portion of the liabilities of commercial banks is in the form of demand deposits, commercial banks throughout the country, including those in Fayette County, maintain a high degree of liquidity by investing most of those deposits in relatively short term loans and in high grade bonds that have a ready market.

(30) Commercial banks in the United States, including those in Fayette County, have the power to create demand deposits

and thereby to create a large proportion of the current, circulating medium of exchange, that is, demand deposit credits in the form of checking account balances.

[873] (31) Commercial banks are the only financial institutions in the United States authorized to create and receive demand deposits, which are deposits withdrawable upon a demand in the form of a check drawn against the deposit account.

(32) Commercial banks, including those in Fayette County, generally do not make a term loan for more than five years since they must maintain high liquidity in order to meet potential withdrawals of demand deposits, which comprise the major portion of their total deposits.

(33) Commercial banks generally, including those in Fayette County, not only engage in a broader area of lending activities than any other financial institution, they also specialize in certain areas, including short-term loans to businesses in which other institutions do not make to any great extent.

(34) Business must rely exclusively on commercial banks for demand deposit services and for certain types of loans, such as short term commercial and industrial loans.

(35) One of the factors inducing customers of commercial banks to seek one type of service at their bank is the fact that the commercial bank also performs other financial services for the customers and no other financial institution can provide all the services provided by commercial banks.

(36) The Federal Reserve System, of which First National and Security were members prior to the consolidation, controls the volume of credit in the country by establishing the percentage of deposits which member banks must maintain as reserves, by raising or lowering the discount rate at which member banks borrow from the Federal Reserve, and by buying or selling United States Government securities in the open market.

[874] (37) At present commercial banks which are members of the Federal Reserve System as is First Security, must maintain on deposit with the Federal Reserve Bank or in currency in their own bank reserves of 17½% of their demand deposits if they are central reserve cities, 16½% if they are reserve cities

and reserves of 11% if they are so-called country banks. Commercial banks in Lexington are classified as country banks.

(38) Fayette County is in Federal Reserve District number 4 and member banks in that district have their reserves deposited with the Cincinnati Branch of the Federal Reserve Bank of Cleveland.

(39) Commercial banks are frequently moved into a reserve deficiency position by withdrawal of deposits or by making loans which reduce their reserves below the legal minimum. In such cases banks may within limits raise their reserves to the legal minimum by borrowing from Federal Reserve Banks or from correspondent banks, by liquidating short-term securities, by calling demand loans or by purchasing federal funds (which are funds owned by other banks in excess of their reserve requirements that are regularly purchased and sold by commercial banks for brief periods of time). During 1960 both First National and Security Trust Borrowed or purchased funds from banks situated outside Kentucky in order to raise their reserve accounts to the legal minimum and sold funds in excess of reserve requirements to banks located outside of Kentucky.

(40) In order to protect depositors in commercial banks from losses due to insolvency of the bank, there are laws and regulations over the amount a bank can lend to any one customer, prohibitions on investment in corporate stock or in bonds which are not of the highest grade, and many other regulations designed to protect the depositor against loss. These laws are administered by the Board of Governors of the Federal Reserve System, by the Federal Deposit Insurance Corporation (FDIC), and by the Comptroller of the Currency.

[875] All commercial banks in Fayette County are insured by the FDIC and all, except the Central Bank, are members of the Federal Reserve System.

(41) Commercial banks having national charters and commercial banks having state charters do a generally comparable commercial banking business.

(42) The many regulations imposed on commercial banks by law and by supervisory authorities leave a broad area in which banks can compete with one another.

(43) Creation of demand deposits is a major function of commercial banks. At the end of 1960 approximately 80% of the money supply of the United States was in the form of demand deposits, most of which had been created by commercial banks in the process of making loans or investments.

(44) Commercial banks in the United States, through the process of making loans with the funds they receive in the form of demand deposits, are able in the aggregate to expand the total volume of bank credit available by approximately the reciprocal of the percentage of reserves they are required to keep against deposits. Thus, if the reserve requirement is 20%, the banking system as a whole could theoretically expand credit by five times the amount of additional reserves created by a deposit made in any one bank.

(45) Most commercial payments at the present time are made by the transfer of commercial bank demand deposits from one customer to another by the use of checks. Only commercial banks provide checking account services.

(46) As of December 31, 1960, First National had total demand deposits of $44,435,000 and demand deposits of individuals, partnerships and corporations (IPC demand deposits) of $34,333,000, which represented over 75% and over 58%, respectively, of its total deposits.

[876] (47) As of December 31, 1960, Security Trust had total demand deposits of $12,115,000 and IPC demand deposits of $11,503,000 which represented over 69% and over 66%, respectively, of its total deposits.

(48) As of December 31, 1960, all commercial banks in Fayette County had total demand deposits of $107,248,000 and IPC demand deposits of $89,194,000, which represented over 73% and over 60% of their total deposits.

(49) Commercial Banks are the only financial institutions in Fayette County which accept time deposits of partnerships and corporations.

(50) Commercial banks are not permitted to accept savings deposits from corporations.

(51) As of December 31, 1960, First National had total time deposits of $14,238,000, which represented over 24% of its total deposits.

(52) As of December 31, 1960, Security Trust had total time deposits of $5,287,000, which represented over 30% of its total deposits.

(53) As of December 31, 1960, all commercial banks in Fayette County had total time deposits of $39,197,000, which represented over 26% of their total deposits.

(54) One of the factors which account for the ability of commercial banks in Fayette County to retain and increase savings deposits is the fact that commercial banks can perform a great many other financial services for such depositors.

(55) Commercial banks specialize in making short-term loans to businesses and individuals for operating expenses, inventories, and similar purposes and business establishments are dependent upon commercial banks for short term loans. [877] (56) Commercial and industrial loans constitute a substantial portion of the total loans of commercial banks in Fayette County.

(57) As of December 31, 1960, First National had commercial and industrial loans of $7,560,000, which represented over 21% of its total loans and discounts.

(58) As of December 31, 1960, Security Trust had commercial and industrial loans of $3,231,000, which represented over 25% of its total loans and discounts.

(59) As of December 31, 1960, all commercial banks in Fayette County had commercial and industrial loans of $23,660,000, which represented over 26% of their total loans and discounts.

(60) Unsecured, short-term commercial loans are readily available to Fayette County business men only from commercial banks.

(61) Since customers of commercial banks can not normally obtain loans from banks which do not have knowledge of the customers' credit standing and since small and medium sized business concerns are known primarily in their own locality, such concerns are generally required to do business with local banks.

Small and medium sized business concerns in Fayette County generally can obtain loans only from banks located in Fayette County.

(62) Small and medium sized businesses, in general and in Fayette County, have very little opportunity to obtain external funds from institutional investors such as insurance companies, pension funds, and other financial institutions. The commercial bank is the primary, and in practice the only, regular source for the recurring short and intermediate term financing needs of small and medium sized businesses.

(63) Although subject to variations in different industries, a small business is generally one with fewer than 250 employees.

(64) Single payment loans to individuals are loans made for a specific term, generally a relatively short term, repayable in one [878] lump sum. Commercial banks are the only financial institutions in Fayette County which make single payment loans to individuals.

(65) As of December 31, 1960, First National had single payment loans to individuals of $5,603,000.

(66) As of December 31, 1960, Security Trust had single payment loans to individuals of $556,000.

(67) As of December 31, 1960, all commercial banks in Fayette County had single payment loans to individuals of $8,647,000.

(68) Real Estate loans made by commercial banks are generally short and medium term while those made by savings and loan associations, insurance companies and other financial institutions are for long terms.

(69) As of December 31, 1960, First National had real estate loans of $7,548,000.

(70) As of December 31, 1960, Security Trust had real estate loans of $5,648,000.

(71) As of December 31, 1960, all commercial banks in Fayette County had real estate loans of $25,976,000.

(72) Except for mortgage loans made to nationally known borrowers or loans based on leases to nationally known concerns, loans secured by nonfarm, nonresidential mortgages are made in Fayette County only by commercial banks.

(73) As of December 31, 1960, First National had loans secured by nonfarm, nonresidential mortgages of $4,496,000.

(74) As of December 31, 1960, Security Trust had loans secured by nonfarm, nonresidential mortgages of $1,887,000.

(75) AAs of December 31, 1960, all commercial banks in Fayette County had loans secured by nonfarm, nonresidential mortgages of $10,863,000.

(76) As of December 31, 1960, First National had instalment loans to individuals of $10,776,000.

[879] (77) As of December 31, 1960, Security Trust had instalment loans to individuals of $1,808,000.

(78) As of December 31, 1960, all commercial banks in Fayette County had instalment loans to individuals of $19,651,000.

(79) Commercial banks in Fayette County are virtually the only source of instalment loans to individuals to repair and modernize residential property.

(80) As of December 31, 1960 First National had instalment loans to individuals to repair and modernize residential property of $2,619,000.

(81) As of December 31, 1960 Security Trust had instalment loans to individuals to repair and modernize residential property of $564,000.

(82) As of December 31, 1960 all commercial banks in Fayette County had instalment loans to individuals to repair and modernize residential property of $3,604,000.

(83) Many commercial banks provide a wide variety of trust services. Corporate trust services include acting as registrar or transfer agent, bond and coupon paying agent, and other functions. Personal trust services include investment management, executorships, trustee of pension and profit sharing trusts, administration of estates, estate planning, custodian of securities, operation of common or diversified trust funds for collective investment of individual trust accounts, funded and life insurance trusts, and cemetery trusts.

(84) As of December 31, 1960, First National had 370 trust accounts with total trust assets of $31,108,000. For the year 1960, First National had Trust Department earnings of $222,219, which represented over 7% of its total earnings for that year.

(85) As of December 31, 1960, Security Trust had 794 trust accounts with total trust assets of $35,522,000. For the year

1960, Security Trust had Trust Department earnings of $230,124, which represented 17% of its total earnings for that year.

[880] (86) Commercial banks in Fayette County offer a large number of other financial services, such as loans to financial institutions, loans for purchasing or carrying securities, loans to farmers not secured by real estate, loans to churches, hospitals, charitable or educational institutions, safe-deposit boxes, and others.

(87) Savings and loan associations in Fayette County issue shares for the funds they receive and the shareholder is not entitled to have the consideration given for the shares returned on demand as is the holder of a demand deposit in a commercial bank.

(88) The savings accounts in savings and loan associations are equity holdings and do not create the creditor-debtor relationship which is created by a deposit in a commercial bank.

(89) Savings and loan associations in Fayette County are limited by law, with minor exceptions, to making mortgage loans on residential properties. As of December 31, 1960, mortgage loans comprised over 99% of the total loans of the four savings and loan associations in Fayette County while comprising less than 30% of the total loans of all commercial banks in Fayette County.

(90) Savings and loan associations in Fayette County do not accept time deposits of partnerships and corporations as do commercial banks.

(91) The lending activities of insurance companies in Fayette County are confined to long term mortgage loans which commercial banks prefer not to make and they offer no other financial services.

(92) Credit unions in Fayette County are limited to dealing with persons who are eligible to belong to them by reason of their employment. Their services are not available to members of the general public as are those of commercial banks.

(93) The only financial services offered by credit unions in Fayette County are the sale of shares and the making of small loans to eligible persons.

[881] (94) Credit unions in Fayette County issue shares for the funds they receive and the shareholder is not entitled to

have the consideration given for the shares returned on demand as is the holder of a demand deposit in a commercial bank.

(95) The savings accounts in credit unions are equity holdings and do not create the creditor-debtor relationship which is created by a deposit in a commercial bank.

(96) Credit unions in Fayette County do not accept time deposits of partnerships and corporations.

(97) The maximum amount which a shareholder may acquire in a credit union and the maximum amount which a shareholder may borrow from a credit union is usually relatively small.

(98) Small loan companies and sale finance companies in Fayette County borrow heavily from commercial banks. Prior to the consolidation both First National and Security Trust made loans to personal loan companies and to sales finance companies.

(99) Commercial banks in Fayette County do not normally lend money to institutions who might use those borrowings to make loans in competition with them.

(100) In Fayette County, small loan companies are permitted under a special small-loan act, administered separately from the banking laws, to charge, for the loans they are permitted to make, interest far in excess of the rate commercial banks charge. Generally the interest rate actually charged by these companies is the maximum permitted by law.

In general, the loans made by small loan companies involve a much higher risk than loans of the same type made by commercial banks and would not be made by a commercial bank.

(101) The maximum loan limit for small loan companies in Fayette County is $800. They offer no financial service other than small loans.

[882] (102) Sales finance companies in Fayette County concentrate on consumer installment credit and offer no other financial services.

(103) In considering applications for approval to merge or consolidate, the Office of the Comptroller of the Currency defines the service area of a commercial bank as "the geographical area from which the bank or the office derives 75% or more of

its deposits, both demand and time, of individuals, partnerships, and corporations."

(104) The service area of First National and Security Trust was Fayette County, Kentucky.

(105) During the period January 1, 1960 through May 31, 1960 over 93% of the number of demand deposit accounts held by First National and over 95% of the dollar value of such accounts were maintained by customers located in Lexington.

(106) During the period January 1, 1960 through May 31, 1960 over 95% of the number of demand deposit accounts held by First National and over 97% of the dollar value of such accounts were maintained by customers who were either located in Lexington or maintained an office in Lexington.

(107) During the period January 1, 1960 through May 31, 1960 over 88% of the number of demand deposit accounts held by Security Trust and over 92% of the dollar value of such accounts were maintained by customers located in Lexington.

(108) During the period January 1, 1960 through May 31, 1960 over 95% of the number of demand deposit accounts held by Security Trust and over 97% of the dollar value of such accounts were maintained by customers who were either located in Lexington or maintained an office in Lexington.

(109) During the period January 1, 1960 through December 31, 1960 over 89% of the total number of loans (except installment loans) made by First National and over 82% of the dollar value of such loans were made to borrowers located in Lexington.

[883] (110) During the period January 1, 1960 through December 31, 1960 over 91% of the total number of loans (except instalment loans) made by First National and over 87% of the dollar value of such loans are made to borrowers who were either located in Lexington or maintained an office in Lexington.

(111) During the period January 1, 1960 through December 31, 1960 over 88% of the total number of loans (except instalment loans) made by Security Trust and over 72% of the dollar value of such loans were made to borrowers located in Lexington.

(112) During the period January 1, 1960 through December 31, 1960 over 90% of the total number of loans (except instalment loans) made by Security Trust and over 78% of the dollar value of such loans were made to borrowers who were either located in Lexington or maintained an office in Lexington.

(113) Customers of the trust departments of the commercial banks in Fayette County are generally customers of other departments of the same bank.

(114) At the time of the consolidation, there was substantial direct competition between First National and Security Trust for commercial banking business, including, but not limited to, demand deposits, commercial and industrial loans, single payment loans to individuals, trust department business, loans secured by nonfarm, nonresidential mortgages and installment loans to individuals to repair and modernize residential property.

(115) The head office of each of the commercial banks in Fayette County including First National and Security Trust is located in the center of the city within sight and a few feet of each other.

(116) Prior to the consolidation First National and Security Trust had 344 common depositors with total combined deposits balances of approximately $6.8 million and 121 common borrowers with total combined loan balances of approximately $4.6 million. These totals represent approximately 10% of the total combined IPC loans and IPC [884] deposits of First National and Security Trust.

(117) First National, Security Trust, and most other commercial banks in Fayette County compete to acquire desirable branch sites.

(118) The Southland branch of First National is located one mile from the pending Ruttenberg branch of Security Trust and 1.1 mile from the pending Zandale branch of Security Trust. Prior to the consolidation officials of First National indicated to the Federal Reserve Board that if the consolidation were consummated, Security Trust's pending branches at Ruttenberg and Zandale would not be needed and the application for these branches would be withdrawn.

(119) The Eastland branch of First National is located 2.5 miles from the North Broadway branch of Security Trust and prior to the consolidation these two branches were in direct competition.

[885] (120) On August 28, 1957 First National applied for permission to establish a branch in the Northland shopping center. In 1958 Security Trust established its North Broadway branch at the intersection of Russell Cave Pike and North Broadway Pike, ¼ mile from the site of the proposed Northland branch of First National. On March 20, 1958, September 19, 1958, March 26, 1959, September 19, 1959, and April 5, 1960, First National renewed its application and on each occasion was granted an extension of the permission to establish the Northland branch. On November 14, 1960, First National reported to the office of the Comptroller of the Currency that, in view of the proximity of the North Broadway branch, it was anticipated that if the consolidation with Security Trust was effectuated the Northland shopping center branch would not be needed.

(121) Prior to the consolidation First National and Security Trust were in direct competition for all types and sizes of loans, the vast majority of which were made to borrowers in Fayette County.

(122) As of December 31, 1960, First National had total net loans and discounts of $35,434,000, which represented 40.22% of the total net loans and discounts of all commercial banks in Fayette County.

(123) As of December 31, 1960, Security Trust had total net loans and discounts of $12,317,000, which represented 13.98% of the total net loans and discounts of all commercial banks in Fayette County.

(124) As of December 31, 1960, First National and Security Trust combined had total net loans and discounts of $47,751,000, which represented 54.20% of the total net loans and discounts of all commercial banks in Fayette County.

The next largest commercial bank in Fayette County, Citizens Union, had 16.41% and the remaining three banks had 14.46%, 8.85% and 6.09% of the total net loans and discounts of all commercial banks in Fayette County.

[886] (125) Prior to the consolidation First National and Security Trust were in direct competition for commercial and industrial loans of all sizes. The vast majority of the business of each of the banks in this category is done within Fayette County.

(126) As of December 31, 1960, First National had commercial and industrial loans of $7,560,000, which represented 21.15% of its total loans and discounts and 31.95% of the total commercial and industrial loans of all commercial banks in Fayette County.

(127) As of December 31, 1960, Security Trust had commercial and industrial loans of $3,231,000, which represented 25.91% of its total loans and discounts and 13.66% of the total commercial and industrial loans of all commercial banks in Fayette County.

(128) As of December 31, 1960, First National and Security Trust combined had commercial and industrial loans of $10,791,000, which represented 45.61% of the total commercial and industrial loans of all commercial banks in Fayette County.

The next largest commercial bank in Fayette County, Citizens Union, had 25.85% and the remaining two banks with such loans had 26.08% and 2.46% respectively, of the total commercial and industrial loans of all commercial banks in Fayette County. Central Bank had none.

(129) Prior to the consolidation, First National and Security Trust were in direct competition for real estate loans. The vast majority of the business of each of the banks in this category is done within Fayette County.

(130) As of December 31, 1960, First National had real estate loans of $7,548,000, which represented 21.11% of its total loans and discounts and 29.06% of the total real estate loans of all commercial banks in Fayette County.

[887] (131) As of December 31, 1960, Security Trust had real estate loans of $5,648,000, which represented 45.03% of its total loans and discounts and 21.74% of the total real estate loans of all commercial banks in Fayette County.

(132) As of December 31, 1960, First National and Security Trust combined had real estate loans of $13,196,000, which

represented 50.80% of the total real estate loans of all commercial banks in Fayette County.

The next largest commercial bank in Fayette County, Citizens Union, had 13.41% and the remaining three banks had 22.13%, 8.18% and 5.48%, respectively, of the total real estate loans of all commercial banks in Fayette County.

(133) Prior to the consolidation First National and Security Trust were in direct competition for single-payment loans to individuals. The vast majority of the business of each of the banks in this category is done within Fayette County.

(134) As of December 31, 1960, First National had single-payment loans to individuals of $5,603,000, which represented 15.67% of its total loans and discounts and 64.79% of the total single-payment loans to individuals of all commercial banks in Fayette County.

(135) As of December 31, 1960, Security Trust had single-payment loans to individuals of $556,000, which represented 4.45% of its total loans and discounts and 6.43% of the total single-payment loans to individuals of all commercials banks in Fayette County.

(136) As of December 31, 1960, First National and Security Trust combined had single-payment loans to individuals of $6,159,000, which represented 71.22% of the total single-payment loans to individuals of all commercial banks in Fayette County.

The three remaining banks with single-payment loans had 13.97%, 13.17% and 1.64%, respectively, of the total single-payment loans to individuals of all commercial banks in Fayette County. Citizens Union had none.

[888] (137) Prior to the consolidation First National and Security Trust were in direct competition for installment loans to individuals. The vast majority of the business of each of the banks in this category is done within Fayette County.

(138) As of December 31, 1960, First National had installment loans to individuals of $10,775,000, which represented 30.14% of its total loans and discounts and 54.84% of the total installment loans to individuals of all commercial banks in Fayette County.

(139) As of December 31, 1960, Security Trust had installment loans to individuals of $1,808,000, which represented 14.49% of its total loans and discounts and 9.20% of the total installment loans to individuals of all commercial banks in Fayette County.

(140) As of December 31, 1960, First National and Security Trust combined had installment loans to individuals of $12,583,000, which represented 64.04% of the total installment loans to individuals of all commercial banks in Fayette County.

The next largest commercial bank in Fayette County, Citizens Union, had 17.76% and the three remaining banks had 13.03%, 3.23% and 1.94%, respectively, of the total installment loans to individuals of all commercial banks in Fayette County.

(141) Prior to the consolidation First National and Security Trust were in direct competition for loans secured by nonfarm, nonresidential mortgages. The vast majority of the business of each of the banks in this category is done within Fayette County.

(142) As of December 31, 1960 First National had loans secured by nonfarm, nonresidential mortgages of $4,496,000 which represented 12.6% of its total loans and discounts and 41.4% of the total loans secured by nonfarm, nonresidential mortgages of all commercial banks in Fayette County.

[889] (143) As of December 31, 1960 Security Trust had loans secured by nonfarm, nonresidential mortgages of $1,887,000 which represented 15.1% of its total loans and discounts and 17.4% of the total loans secured by nonfarm, nonresidential mortgages of all commercial banks in Fayette County.

(144) As of December 31, 1960 First National and Security Trust combined had loans secured by nonfarm, nonresidential mortgages of $6,383,000 which represented 58.8% of the total loans secured by nonfarm, nonresidential mortgages of all commercial banks in Fayette County.

The next largest commercial bank in Fayette County, Citizens Union, had 17.3% and the three remaining banks had 15.8%, 6.2% and 1.9%, respectively, of the total loans secured by nonfarm, nonresidential mortgages of all commercial banks in Fayette County.

(145) Prior to the consolidation First National and Security Trust were in direct competition for installment loans to individuals to repair and modernize residential property. The vast majority of the business of each of the banks in this category is done within Fayette County.

(146) As of December 31, 1960 First National had installment loans to individuals to repair and modernize residential property of $2,619,000 which represented 7.3% of its total loans and discounts and 72.7% of the total installment loans to individuals to repair and modernize residential property of all commercial banks in Fayette County.

(147) As of December 31, 1960 Security Trust had installment loans to individuals to repair and modernize residential property of $564,000 which represented 4.5% of its total loans and discounts and 15.7% of the total installment loans to individuals to repair and modernize residential property of all commercial banks in Fayette County.

[890] (148) As of December 31, 1960, First National and Security Trust combined had installment loans to individuals to repair and modernize residential property of $3,183,000, which represented 88.3% of the total installment loans to individuals to repair and modernize residential property of all commercial banks in Fayette County.

The next largest commercial bank in Fayette County, Citizens Union, had 11.3%. Central Bank, the only remaining commercial bank in Lexington which made such loans had .41%.

(149) Prior to the consolidation First National and Security Trust were in direct competition for demand deposits. The vast majority of the business of each of the banks in this category is done within Fayette County.

(150) As of December 31, 1960, First National had total demand deposits of $44,435,000 which represented 75% of its total deposits and 41.43% of the total demand deposits of all commercial banks in Fayette County.

(151) As of December 31, 1960, Security Trust had total demand deposits of $12,115,000 which represented 69.62% of its total deposits and 11.30% of the total demand deposits of all commercial banks in Fayette County.

(152) As of December 31, 1960, First National and Security Trust had combined total demand deposits of $56,550,000, representing 52.73% of the total demand deposits of all commercial banks in Fayette County.

The next largest commercial bank in Fayette County, Citizens Union, had 17.15% and the remaining three banks had 13.08%, 10.10% and 6.94%, respectively, of the total demand deposits of all commercial banks in Fayette County.

[891] (153) As of December 31, 1960, First National had IPC demand deposits of $34,353,000, which represented 58.52% of its total deposits and 38.49% of the total IPC demand deposits of all commercial banks in Fayette County.

(154) As of December 31, 1960, Security Trust had IPC demand deposits of $11,593,000, which represented 66.62% of its total deposits and 13.00% of the total IPC demand deposits of all commercial banks in Fayette County.

(155) As of December 31, 1960, First National and Security Trust had combined IPC demand deposits of $45,926,000 representing 51.49% of the total IPC demand deposits of all commercial banks in Fayette County.

The next largest commercial bank in Fayette County, Citizens Union, had 18.36% and the remaining three banks had 14.02%, 8.12% and 8.02%, respectively, of the total IPC demand deposits of all commercial banks in Fayette County.

(156) Prior to the consolidation, First National and Security Trust were in direct competition for time deposits. The vast majority of the business of each of the banks in this category is done within Fayette County.

(157) As of December 31, 1960, First National had total time deposits of $14,238,000, which represented 24.27% of its total deposits and 36.32% of the total time deposits of all commercial banks in Fayette County.

(158) As of December 31, 1960, Security Trust had total time deposits of $5,287,000 which represented 30.38% of its total deposits and 13.49% of the total time deposits of all commercial banks in Fayette County.

(159) As of December 31, 1960, First National and Security Trust had combined total time deposits of $19,525,000, repre-

senting 49.81% of the total time deposits of all commercial banks in Fayette County.

[892] The next largest commercial bank in Fayette County, Citizens Union, had 15.76% and the remaining three banks had 13.95%, 12.02% and 8.46%, respectively, of the total time deposits of all commercial banks in Fayette County.

(160) Prior to the consolidation, First National and Security Trust were in direct competition for all forms of trust business. The vast majority of the business of each of the banks in this category is done within Fayette County.

(161) Both First National and Security Trust performed a variety of trust services for individuals including custody, agency or safekeeping and escrow services. Each acted in various fiduciary capacities, including those of administrator or executor of estates, trustee of testamentary or voluntary trusts, committee and guardian.

(162) Both First National and Security Trust performed a variety of trust services for corporate customers, including trustee services on bond or debenture issues, paying agency services, transfer agency services, and registrar services.

(163) As of December 31, 1960, First National had 370 trust accounts and trust assets of approximately $31,108,000 which represented 25.31% of the trust accounts and 44.27% of the trust assets of all commercial banks in Fayette County. Its trust department earnings for the year 1960 were approximately $222,000 which represented 45.29% of the total trust department earnings of all commercial banks in Fayette County.

(164) As of December 31, 1960, Security Trust had 794 trust accounts and trust assets of approximately $35,522,000 which represented 54.31% of the trust accounts and 50.55% of the trust assets of all commercial banks in Fayette County. Its trust department earnings for the year 1960 were approximately $230,000 which represented 46.91% of the total trust department earnings of all commercial banks in Fayette County.

[893] (165) As of December 31, 1960, First National and Security Trust had a combined total of 1,164 trust accounts, and a combined total of trust assets of $66,629,000, representing 79.62% of the number of trust accounts and over 94% of the

total trust assets of all commercial banks in Fayette County. Together they earned in 1960 over 92% of the total amount earned on trust accounts by all commercial banks in Fayette County in that year.

The next largest commercial bank in Fayette County, Citizens Union, had 16.01% of the number of accounts and 3.41% of the assets. The two remaining banks with trust departments had 2.26% and 2.12%, respectively, of the total number of trust accounts and 1.33% and .44%, respectively, of the trust assets of all commercial banks in Fayette County.

(166) First Security, through its trust department, controls over 36% of the real estate in the prime commercial area in Lexington. This real estate has a total assessed value of over $3,226,000, representing over 29% of the total assessed value of all real estate in the prime commercial area in Lexington.

Prior to the consolidation First National's trust department controlled approximately 12% and Security Trust's trust department controlled approximately 24% of such property.

(167) First Security, through its trust and farm management departments, controls 56 farms with a total of 16,299 acres.

(168) First Security, through its trust department, controls substantially all of the stock of the Lexington Herald-Leader Company, which publishes and distributes The Lexington Herald and The Lexington Leader, the only two newspapers published in Fayette County.

(169) As of December 31, 1960, First National had four banking offices in operation, all located in Fayette County, which represented over 26% of the total number of banking offices in operation of all commercial banks in Fayette County.

[894] (170) As of December 31, 1960, Security Trust had two banking offices in operation, both located in Fayette County, which represented over 13% of the total number of banking offices in operation of all commercial banks in Fayette County. As of December 31, 1960, Security Trust had applications pending for two additional branches, both of which are to be located in Fayette County.

(171) As of December 31, 1960, First National and Security Trust combined had a total of six banking offices in opera-

tion, all located in Fayette County, which represented 40% of the total number of banking offices in operation of all commercial banks in Fayette County.

As of December 31, 1960, First National and Security Trust combined had a total of eight banking offices in operation or applied for, all located or to be located in Fayette County, which represented over 47% of the total number of banking offices in operation or applied for of all commercial banks in Fayette County.

The next largest commercial bank in Fayette County, Citizens Union had over 26% of the total number of banking offices in operation and over 23% of the total number of banking offices in operation or applied for. The remaining three commercial banks in Fayette County had approximately 20%, 7% and 7%, respectively, of the total number of banking offices in operation and approximately 18%, 6% and 6%, respectively, of the total number of banking offices in operation or applied for.

All banking offices of all commercial banks in Fayette County are located within Fayette County.

(172) As of December 31, 1960, First National had assets of $65,069,000 which represented 39.83% of the total assets of all commercial banks in Fayette County.

(173) As of December 31, 1960, Security Trust had assets of $21,033,000, representing 12.87% of the total assets of all commercial banks in Fayette County.

[895] (174) As of December 31, 1960, First National and Security Trust had combined total assets of $86,102,000, which represented 52.70% of the total assets of all commercial banks in Fayette County.

The next largest commercial bank in Fayette County, Citizens Union, had 17.06% and the remaining three banks had 12.99%, 9.14% and 8.10%, respectively, of the total assets of all commercial banks in Fayette County.

(175) As of December 31, 1960, First National had total capital funds of $5,023,000, which represented 35.92% of the total capital funds of all commercial banks in Fayette County.

(176) As of December 31, 1960, Security Trust had total capital funds of $3,035,000, which represented 21.71% of the

total capital funds of all commercial banks in Fayette County.

(177) As of December 31, 1960, First National and Security Trust combined had total capital funds of $8,058,000, which represented 57.63% of the total capital funds of all commercial banks in Fayette County.

The next largest commercial bank in Fayette County, Citizens Union, had 18.83% and the remaining three banks had 12.12%, 7.75% and 3.68%, respectively, of the total capital funds of all commercial banks in Fayette County.

(178) As of December 31, 1960, First National had total deposits of $58,673,000, representing 40.06% of the total deposits of all commercial banks in Fayette County.

(179) As of December 31, 1960, Security Trust had total deposits of $17,402,000, representing 11.88% of the total deposits of all commercial banks in Fayette County.

[896] (180) As of December 31, 1960, First National and Security Trust had combined total deposits of $76,075,000, representing 51.95% of the total deposits of all commercial banks in Fayette County.

The next largest commercial bank in Fayette County, Citizens Union, had 16.78% and the remaining three banks had 13.32%, 9.66% and 8.30%, respectively, of the total deposits of all commercial banks in Fayette County.

(181) A major factor considered by commercial banks in the selection of another bank as a correspondent within which to maintain a deposit is whether or not this bank is located in a city which has a Federal Reserve Bank or a Federal Reserve Branch Bank.

[897] (182) Advertising in newspapers and other media is an important means by which commercial banks, including banks in Fayette County, secure and retain customers.

(183) The report to Congress of the Select Committee on Small Business of the House of Representatives [H. Rept. No. 1889, 85th Cong. 2d Sess. (1958)] stated in part as follows:

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> The inability of small business to secure adequate financing for investment in the establishment, modernization, and expansion of a business enterprise through

either the sale of equity and other long-term securities to the public, or to accumulate and retain earnings from which to make such investments on a long-term basis, leaves small business restricted to financing through the use of borrowed capital.

Borrowing from banks

The principal source of small business borrowing is from commercial banks. The ability of small business to borrow needed capital from commercial banks is dependent primarily upon the ability of the small-business concern to first establish a line of credit with the bank in question.

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A small-business concern without a line of credit from a commercial bank is in serious difficulty. That fact is obvious.

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In a preceding section of this report it has been pointed out that the commercial banks for the most part, engage in short-term and intermediate financing of business. Life-insurance companies as a rule are not interested in short-term loans. The average maturity of the loans made by life-insurance companies is in excess of 10 years. They have specialized in intermediate and long-term credits provided through open-market purchases of corporate bonds and notes, direct purchases of such instruments, and mortgage loans on nonresidential property.

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The life-insurance companies have shown a preference for investment in large blocks, and for securities enjoying active national markets. By law and tradition, caution is required in the [898] investment of their funds. Safety of principal is their watchword, and they do not seek loans with any great risk, especially when demands for high-grade loans at favorable yields are large enough to absorb all available funds. Thus, except for mortgages

properly secured by real estate and industrial plants, the life-insurance-company funds are unavailable for small business.

(184) The report on "Financing Small Business" by the Federal Reserve System to the Committees on Banking and Currency and the Select Committees on Small Business of the United States Congress [85th Cong., 2d Sess. Parts 1 and 2 (April 11, 1958)] states in part:

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The most important group of short- and intermediate-term lenders to small business are the commercial banks.

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Even given the necessity of minimum credit standards in bank lending, as discussed earlier in this report, it is widely recognized that evaluation of credit risks is not an exact science. It may be easy to assess the creditworthiness of a large, well-established firm with a history of successful operations that is proven by audited records. But it takes considerable skill and judgment to evaluate the creditworthiness of a small firm, particularly a new one, whose prospects may depend heavily on the ability and health of the owner and whose past record may be based partly on intangible factors which are difficult to assess.

Recognizing the above distinction, it is understandable that there are many gradations of credit risk which might be assigned by different loan officers to the same small business loan application. While the decision may be based, in part, on certain formulas involving various financial ratios, there are other aspects of risk which cannot be quantified in lending to small business.

Thus, it is clearly possible that a loan application deemed to be too risky by one bank might be granted, with appropriate safeguards, by another bank.

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> Reflecting the nature of their business and the character of their liabilities to policyholders, the assets of life-insurance companies consist essentially of long-term loans and investments. Business loans, whether secured by mortgages or bonds, have maturities ranging up to 30 years. Bond issues of public utility companies typically carry longer maturities than do those of industrial concerns, about 30 years compared with 20 to 25 years. Contract maturities on mortgages are generally in the neighborhood of 15 to 25 years. Data on loan maturities were not obtained in the LIAA survey, but other evidence indicates that there is apparently little difference in maturities between smaller and larger loans, through either bond issues or mortgages.

[900] (185) Mr. Leonard C. Smith, Vice-President of First National prior to the merger, and presently Vice-President of First Security was one of the sponsors of the Foundation for Commercial Banks. That Foundation engages in extensive national advertising stressing the uniqueness of commercial banks and the advantages commercial banks possess as compared with other financial institutions.

(186) In a letter dated January 21, 1960 to the Comptroller of the Currency First National and Security Trust stated:

> With the exception of Security Trust Company, the various trust departments of the other banks, including that of First National, were established and have been operating primarily in order to provide trust service for their own customers and as an accommodation to those customers.

(187) On October 24, 1961 Edward S. Dabney and Leroy Miles submitted to the Attorney General a memorandum which stated in part: "We make most of our loans to the small borrower."

(188) In making regularly published reports on monetary and financial statistics the Federal Reserve System, the Federal Deposit Insurance Corporation and the Comptroller of the Cur-

rency report separately the statistics pertaining to commercial banks and also the major losses of commercial bank assets and liabilities, including demand deposits, demand deposits of individuals, partnerships and corporations, time deposits, commercial and industrial loans, real estate loans secured by nonfarm, nonresidential mortgages and other loans.

(189) The net profits of Security Trust Company for the years 1956 through 1960 were:

1956	$192,919.03
1957	$220,063.73
1958	$226,571.20
1959	$254,710.51
1960	$426,057.03

[901] (190) The Net Profits of First National Bank and Trust Company for the years 1956 through 1960 were:

1956	$293,442.70
1957	$302,276.96
1958	$671,733.37
1959	$463,161.99
1960	$552,436.07

(191) In a speech to the stockholders of Security Trust regarding the proposed consolidation, made on January 10, 1961, Edward S. Dabney, then President of Security Trust, said in part:

> [I]t is well recognized by anybody who knows anything about trust business that the way for a trust company to get trust business is from its customers who are served by other parts of the bank, particularly in the commercial business. That's how the trust business grows into a trust department. * * * [I]t is obvious that since every bank tried to keep the trust business of its customers, now we are in competition with other banks.

(192) In an article by Thomas Lefforge, President of Commercial Discount Corp. and Chairman of the Board of National Commercial Finance Conference, which appeared in the December 20, 1961 issue of *American Banker*, it was stated that:

> Probably no two industries offering similar services, and having similar customers, are more inter-related

than banking and the commercial financing business. This is not an anomaly when considered that although both merchandise the same product—money—to customers, they are not truly competitive since they satisfy different needs and operate under different rules.

(193) A corporate or institutional trustee differs in several important respects from an individual trustee, including: (a) the trust institution offers continuous existence, obviating any necessity for a substitution of fiduciaries due to illness or death; (b) the trust institution with its large capital and resources, offers a high degree of financial responsibility; (c) the trust institution [902] has been exempted in most states, including Kentucky, from the obligation of obtaining the surety bond required of individual trustees at considerable expense to the funds under administration; (d) the trust institution is subject to direct supervision of Federal and/or state administrative agencies; (e) the personnel of a trust institution are especially trained for their duties, frequently becoming experts in particular areas of trust activity; (f) the trust institution offers the advantages of group judgment; (g) the trust institution possesses the quality of adaptability to meet all of the fiduciary requirements of a customer; (h) the trust institution, by virtue of its location, its organization, and its method of operation, is physically within reach and available for consultation at all reasonable hours of every business day.

[903] [Certificate of service omitted in printing.]

[909] In The United States District Court, Eastern District of Kentucky at Lexington

Civil Action No. 1424

[Title omitted]

[File endorsement omitted]

Defendants Response to Request for Admission of Facts—Filed February 8, 1962

First Security National Bank and Trust Company of Lexington, defendant in the above entitled action, makes the fol-

lowing statement in response to the Request for Admission of Facts served upon it by plaintiff on January 29, 1962:

A) All dollar amounts listed in all of the Requests for Admissions have been rounded off to the nearest thousand dollars, and as rounded off the same are accurate and correct.

1) Admitted.

2) Admitted.

3) Admitted.

[910] 4) Admitted, except that the other banking business conducted with customers in other states by First National was minimal.

5) Admitted, except that the other banking business conducted with customers in other states by Security Trust Company was minimal.

6) Admitted, except that the other banking business conducted with customers in other states by First Security was minimal.

7) Defendant denies that First National Bank and Trust Company of Lexington was organized in 1929, but it admits that it resulted from a consolidation of the Phoenix National Bank and Trust Company and the First and City National Bank made in 1929. Defendant admits that it assumed control and management of Fayette National Bank in 1931 and that all of its assets were transferred to First National, but it states that such was done at the insistence of the bank supervisory agents to save the Fayette National Bank and its depositors.

8) Admitted.

9) Admitted.

10) Admitted.

11) Admitted.

12) Admitted.

13) Defendant admits that as of March 1, 1961, First National and Security Trust were consolidated into First Security under the old charter of First National Bank and Trust Company of [911] Lexington pursuant to the terms of 12 U.S.C.A., Sec. 215.

14) Admitted.

15) Admitted.

16) Admitted.

17) Admitted, except that the letter was to the officials of both banks from Ira J. Porter.

18) Admitted.

19) Defendant admits that early in 1960 First National appointed a committee to take steps toward reopening negotiations for a merger with Security, but it denies that the negotiations were resumed at the instance of First National.

20) Admitted.

21) Admitted.

22) Admitted.

23) Admitted.

24) Defendant admits that the Comptroller of the Currency requested and received reports concerning the competitive factors involved in the proposed merger from the Board of Governors of the Federal Reserve System, the Attorney General and Federal Deposit Insurance Corporation, but it denies the statement "all of which concluded that the effect of the proposed consolidation of competition would be adverse."

25) Denied.

26) Admitted.

27) Admitted, except that the complaint in this action was filed after the consolidation was actually effected.

[912] 28) Defendant is unable to admit Request No. 28 as stated. The defendant does admit that a major function of commercial banks, including those in Fayette County, is the acceptance of demand deposits and the making of loans to individuals, partnerships, corporations and borrowers. The defendant does not admit that commercial banks create demand deposits in the sense that commercial banks have any control over them. The defendant does admit that commercial banks accept time and savings deposits, engage in trust functions, supply currency to the public, maintain safe deposit facilities and provide other services.

29) Defendant is unable to admit Request No. 29 in that the request calls for an admission of conclusion rather than an admission of fact.

30) Defendant is unable to admit Request No. 30 as stated. Demand deposits are created by action of the depositor in depositing money in the bank, and the defendant does not

admit that commercial banks have the power to create demand deposits if by that term it is implied that commercial banks have any control over them. They do have the power to accept demand deposits, and as a result there is created demand deposit credits in the form of checking account balances.

31) Commercial banks are the only financial institutions authorized to receive demand deposits, withdrawable upon demand in the form of a check drawn against the deposit account. The deposits, however, are created by the depositor and to this extent only the Request is denied.

[913] 32) Defendant is unable to admit or deny as to the practice of commercial banks generally, but it denies that commercial banks in Fayette County generally do not make a term loan for more than five years.

33) Defendant is unable to admit or deny as to commercial banks generally, but as to commercial banks in Fayette County it admits that they do engage in a broader area of lending activities than other financial institutions. It denies that commercial banks in Fayette County specialize in certain areas, including short term loans to businesses in which other institutions do not make to any great extent.

34) As to demand deposit services, it is admitted. As to certain types of loans, such as short term commercial or industrial loans, the Request is denied.

35) Admitted.

36) Defendant admits that First National and Security were members of the Federal Reserve System prior to the consolidation. It denies that the Federal Reserve System "controls" the volume of credit in the country by the means stated. It will admit, however, that the Federal Reserve System attempts to regulate the volume of credit in the country by the means stated.

37) Defendant admits that First Security is a member of the Federal Reserve System and that it is classified as a country bank, and that it must maintain, on deposit with the Federal Reserve Bank or in currency in its own bank reserves, 5 per cent of its time and savings deposits and 12 per cent of its demand deposits. Defendant is unable to admit or deny the remainder of the Request for Admissions.

[914] 38) Admitted.

39) Defendant admits that commercial banks are moved into a reserve deficiency position by withdrawal of deposits or by making loans which reduce their reserves below the legal minimum. Defendant has no knowledge as to whether or not this is done frequently by banks and therefore it denies that it is frequently done. Defendant admits the second sentence of Request No. 39. As to the third sentence thereof, defendant admits that both First National and Security Trust borrowed or purchased funds from other commercial banks in order to raise their reserve accounts to the legal minimum. Defendant has no knowledge as to whether such banks were located outside Kentucky and it therefore denies this portion of the third sentence.

40) Defendant admits that all of the laws and regulations stated are in force and it admits that one of the purposes of these laws and regulations is to protect depositors in commercial banks from loss due to the insolvency of the bank. However, defendant states that there is another purpose of such laws and regulations and that there are laws and regulations governing banking in addition to those stated. It admits that all commercial banks in Fayette County are insured by the F.D.I.C. and that all except the Central Bank are members of the Federal Reserve System.

41) Defendant admits that commercial banks having National charters and commercial banks having State charters may be authorized to do generally comparable commercial banking business, but it states that whether they actually do generally comparable commercial banking business is a matter that may differ with individual banks.

[915] 42) Denied.

43) Defendant is unable to admit Request No. 43 in that is does not admit that commercial banks create demand deposits in the sense that they have any control over them. Demand deposits are created by the deposit of money by a depositor in a commercial bank and are subject to the control of the depositor. The defendant can neither admit nor deny that at the end of 1960 approximately 80 percent of the money supply of the United States was in the form of demand deposits.

for the reason that it does not know what percent of the money supply of the United States was in the form of demand deposits. It denies the statement that most of the money supply "had been created by commercial banks in the process of making loans or investments."

44) Denied.

45) Defendant admits that only commercial banks provide checking accounts services. Defendant has no knowledge concerning whether or not most commercial payments at the present time are made by the transfer of commercial bank demand deposits from one customer to another by the use of checks and it therefore denies the same.

46) Admitted.

47) Admitted.

48) Admitted.

49) Admitted.

50) Admitted.

51) Admitted.

[916] 52) Admitted.

53) Admitted.

54) Denied. Defendant cannot admit or deny the trust of Request No. 54, since the Request calls for a conclusion.

55) Denied. Defendant cannot admit or deny the truth of Request No. 55, since the Request calls for a conclusion.

56) Denied. Defendant cannot admit or deny the truth of Request No. 56, since the Request calls for a conclusion.

57) Admitted.

58) Admitted.

59) Admitted.

60) Denied. Defendant cannot admit or deny the truth of Request No. 60, since the Request calls for a conclusion.

61) Denied.

62) Denied.

63) Denied. Defendant cannot admit or deny the truth of Request No. 63, since the Request calls for a conclusion.

64) Defendant admits the first sentence of Request No. 64 and denies the second sentence thereof.

65) Admitted.
66) Admitted.
67) Admitted.
68) Denied.
69) Admitted.
70) Admitted.
71) Admitted.
72) Denied.
[917] 73) Admitted.
74) Admitted.
75) Admitted.
76) Admitted.
77) Admitted.
78) Admitted.
79) Denied.
80) Admitted.
81) Admitted.
82) Admitted.
83) Admitted.
84) Admitted.
85) Admitted.
86) Admitted.
87) Denied.
88) Denied.
89) The first sentence of this Request is denied. Defendant admits that as of December 31, 1960, mortgage loans comprised over 99 per cent of the total loans of the four Savings and Loan Associations in Fayette County, but it denies that such loans comprised less than 30 per cent of the total loans of all commercial banks in Fayette County.
90) Admitted.
91) Denied.
92) Admitted.
93) Denied.
[918] 94) Denied.
95) Denied.
96) Admitted.

97) Denied. Defendant cannot admit or deny the truth of Request No. 97, since the Request calls for a conclusion.

98) The first sentence of Request No. 98 is denied. Defendant cannot admit or deny the truth thereof since the Request calls for a conclusion. The second sentence thereof is admitted.

99) Denied.

100) Defendant admits that in Fayette County small loan companies are permitted under a special small loan act to charge for the loans they are permitted to make interest in excess of the rate commercial banks charge. The defendant has no knowledge as to whether or not the interest rates charged by these companies is the maximum permitted by law. The defendant denies the other facts set out in the Request.

101) Defendant admits the first sentence thereof. It denies the last sentence thereof.

102) Defendant is unable to admit or deny Request No. 102 because it does not know what categories of financial institutions are intended to be covered by "sales finance companies."

103) Defendant admits that in the application form which banks submit to the Comptroller for approval to merge or consolidate the Office of the Comptroller of the Currency has defined the service area of a commercial bank as "the geographical area from which the bank or the office derives 75 per cent or more of its deposits, both demand and time, of individuals, [919] partnerships, and corporations." In passing on the application for approval of First National Bank and Trust Company of Lexington and Security Trust Company, the defendant does not know whether or not the Comptroller of the Currency limited his consideration to the service area as thus defined in assessing the impact of the competitive factors involved.

104) Defendant admits Request No. 104 if by the term "service area" the plaintiff intended to mean the "geographical area from which the bank or office derives 75 per cent or more of its deposits, both demand and time, of individuals, partnerships and corporations." If the plaintiff meant by this Request

that the service area comprised some other area other than thus defined, the Request is denied.

105 through 112) As to Requests Nos. 105 through 112, the defendant admits the correctness of the statements contained as to the total number of deposit accounts and loans. The defendant denies the Requests as to the dollar value of deposit accounts and loans.

113) Admitted.

114) Defendant admits that at the time of the consolidation of First National and Security there was competition between First National and Security Trust for commercial banking business, including, but not limited to, demand deposits, commercial and industrial loans, single payment loans to individuals, loans secured by non-farm, non-residential mortgages, and installment loans to individuals to repair and modernize residential property. The statement in the Request that such competition was substantial [920] and direct is a conclusion and the same is denied. Defendant denies that there was competition at the time of the consolidation between the two banks for Trust Department business.

115) Admitted.

116) The figures quoted were taken by the plaintiff from the application of the two banks to consolidate and in the application these figures were distinctly stated to be estimates. As estimated figures they are admitted, but as actual figures they are denied.

117) Denied.

118) As to Request No. 118, the first sentence is admitted. Efforts have been made to ascertain the truth of the second sentence of Request No. 118, and defendant's officials have no present recollection of advising the Federal Reserve Board as indicated in the second sentence of said request. Therefore, defendant is unable to admit or deny the second sentence of Request No. 118.

119) Defendant admits that the Eastland Branch of First National is located 2.5 miles from the North Broadway Branch of Security Trust, but it denies that prior to the consolidation these two Branches were in direct competition. Defendant ad-

mits that it sold funds in excess of its reserve requirements to other banks, but it has no knowledge as to whether such banks were located outside Kentucky.

120) Admitted. However, defendant states that the Northland Shopping Center in which its proposed Branch was to be located has not been established to this date. Northland [921] Shopping Center was only projected on August 28, 1957, when permission to establish a branch was applied for, and has never yet been even commenced.

121) Defendant admits that prior to the consolidation First National and Security Trust were in competition for all types and sizes of loans, the majority of which were made to borrowers in Fayette County. To the extent that the Request for Admissions calls for a conclusion, the defendant can neither admit or deny.

122) Admitted.

123) Admitted.

124) Admitted.

125) Defendant admits that prior to consolidation First National and Security Trust were in competition for commercial and industrial loans. Defendant has no knowledge as to whether the vast majority of the business of each of the other banks located in Lexington is done within Fayette County, Kentucky, and it therefore denies the second sentence of the Request as to the other banks. Defendant admits that a majority of its commercial and industrial loans are made to borrowers in Fayette County, Kentucky. To the extent that the Request for Admissions calls for a conclusion, the defendant can neither admit nor deny.

126) Admitted.

127) Admitted.

128) Admitted.

129) Defendant admits that prior to the consolidation First National and Security Trust both made real estate loans [922] and that the majority of such loans made by each of them were made to borrowers located in Fayette County, Kentucky. All other statements contained in the Request are denied.

130) Admitted.

131) Admitted.

132) Admitted.

133) Defendant admits that prior to the consolidation First National and Security Trust both made single payment loans to individuals and that a majority of such loans made by each of them were made to borrowers located in Fayette County, Kentucky. All other statements contained in the Request are denied.

134) Admitted.

135) Admitted.

136) Admitted.

137) Defendant admits that prior to the consolidation First National and Security Trust both made installment loans to individuals. The other statements contained in the Request are denied.

138) Admitted.

139) Admitted.

140) Admitted.

141) Defendant admits that prior to the consolidation First National and Security Trust both made loans secured by non-farm, non-residential mortgages and that a majority of such loans were made to borrowers located in Fayette County, Kentucky. The other statements contained in the Request are denied.

[923] 142) Admitted.

143) Admitted.

144) Admitted.

145) Defendant admits that prior to the consolidation of First National and Security Trust both of said banks made installment loans to individuals to repair and modernize residential property. The other statements contained in the Request are denied.

146) Admitted.

147) Admitted.

148) Admitted.

149) Defendant admits that prior to the consolidation First National and Security Trust were in competition for demand deposits, and it admits that a majority of the number of demand

deposit accounts held by each of them were from customers located in Fayette County, Kentucky. The other statements contained in the Request are denied.

150) Admitted.

151) Admitted.

152) Admitted.

153) Admitted.

154) Admitted.

155) Admitted.

156) Defendant admits that prior to the consolidation First National and Security Trust were in competition for time deposits and that a majority of the number of time deposit accounts held by each of them were from customers located in Fayette County, Kentucky. The other statements contained in the Request are denied.

[924] 157) Admitted.

158) Admitted.

159) Admitted.

160) The first sentence of this Request is denied. Defendant admits that a majority of the number of trust accounts held by them are or were from customers located in Fayette County, Kentucky. The other statements contained in this Request are denied.

161) Admitted.

162) Defendant denies that First National and Security Trust performed a variety of trust services for corporate customers and states that the total amount of the work done by them and the total revenue received by them from corporate trust work is minimal in relation to the total trust services rendered by their Trust Departments and the revenue received therefrom.

163) Admitted.

164) Admitted.

165) Admitted.

166) Denied.

167) Denied.

168) Denied.

169) Admitted.

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170) Admitted.

171) Admitted.

172) Admitted.

173) Admitted.

[925] 174) Admitted.

175) Admitted.

176) Admitted.

177) Admitted.

178) Admitted.

179) Admitted.

180) Admitted.

181) Defendant admits that a factor considered by commercial banks in the selection of another bank as a correspondent within which to maintain a deposit is whether or not this bank is located in a city which has a Federal Reserve Bank or a Federal Reserve Branch Bank, but it denies that such is a major factor.

182) Defendant admits that advertising in newspapers and other media is a means by which commercial banks, including banks in Fayette County, attempt to secure and retain customers, but it denies that it is an important means. Further, defendant is unable to say whether or not banks actually secure and retain customers by such means.

183) Defendant does not have the source from which these quotations were purportedly taken and it is unable to admit or deny the same.

184) As to Request No. 184, the defendant admits that the quotations therein set out are correctly copied from the report on "Financing Small Business." The defendant does not admit the truth of the facts set out in the quotation.

[926] 185) Defendant admits that Leonard C. Smith, one of its Vice Presidents, has been active in behalf of the Foundation For Commercial Banks, but it does not know the meaning which the plaintiff would assign to the word "sponsors," and it denies that he was one of the sponsors of the same. Defendant admits that this Foundation engages in National advertising

which stresses the value of doing business with a commercial bank as compared to doing business with other financial institutions. Any other intended meanings of this Request are denied.

186) Admitted, except that the date of the letter was January 21, 1961, instead of January 21, 1960.

187) Admitted.

188) Admitted.

189) Admitted.

190) Admitted.

191) Admitted.

192) Admitted. As to Request No. 192, the defendant admits that the quotation therein appearing from the December 20, 1961, issue of American Banker is correctly quoted, but the defendant does not admit the truth of the statements contained in the quotation.

193) As to Request No. 193, the defendant admits the following portion thereof, to-wit: A corporate or institutional trustee differs in several respects from an individual trustee, including (a) the trust institution offers continuous existence; (b) the trust institution offers a degree of financial responsibility; (c) the trust institution in Kentucky is exempted from the obligation of obtaining a surety bond; (d) the trust [927] institution is subject to direct supervision of Federal and/or State administrative agencies; (e) the personnel of some trust institutions are trained for their duties; (f) some trust institutions offer the advantage of group judgment; (g) some trust institutions possess a quality of adaptability to meet all of the fiduciary requirements of a customer; (h) some trust institutions are available for consultation at reasonable hours during the business day. The balance of the Request is denied.

/s/ LEROY M. MILES,
President, First Security National Bank and Trust Company of Lexington.

[Duly sworn to by LEROY M. MILES; jurat omitted in printing (all in italics).]

[940] In the United States District Court, Eastern District of Kentucky at Lexington

Civil Action No. 1424

[File endorsement omitted]

[Title omitted]

Plaintiff's Reply to Defendants' Request for Admission of Facts and Genuineness of Documents—Filed February 8, 1962

The United States of America, plaintiff, hereby replies to the Request For Admission of Facts and Genuineness of Documents served upon it by First National Bank and Trust Company of Lexington, et al., defendants, pursuant to Rule 36 of the Federal Rules of Civil Procedure.

The paragraph numbers below correspond to those in Defendants' Request.

A)

1) Admitted.

2) Admitted.

3) Denied as stated. The relationship of the named Savings and Loan Associations to members of the public from whom they solicit funds is not one of debtor and creditor. All holders of an Association's savings account become members of the Association and, as such, are its shareholders and owners rather than its creditors.

4) Denied as stated. The name Savings and Loan Associations do not pay interest on funds invested with them by shareholders but rather semi-annually, on June 30 and December 31 of each year, declare a dividend based upon earnings of the Association for the previous period and [941] payable to shareholders of the Association during the previous six month period. The most recent dividend declared by the named Associations was:

(a) First Federal Savings and Loan Association, 4 percent per annum;

(b) Lexington Federal Savings and Loan Association, 4 percent per annum;

(c) New Union Building Association, 4 percent per annum;

(d) Peoples Savings Fund and Building Association, 5 percent per annum.

5) Admitted.

6) Denied as stated. Although First Federal Savings and Loan Association has made mortgage loans for such periods as five, ten, fifteen, twenty and twenty-five years, loans of five and ten year maturities are the exception rather than the rule. The bulk of maturities in all loans averages about seventeen years.

7) Admitted.

8) Admitted.

9) Admitted.

10) Paragraphs (a) and (b) admitted. Paragraph (c) denied as stated. As of May 31, 1961, Lexington Federal Savings and Loan Association had outstanding 1,896 conventional loans, with a dollar volume of $14,692,661.47.

11) Admitted.

12) Admitted.

13) Admitted.

14) Admitted.

15) Admitted.

16) Admitted.

17) Admitted.

18) Admitted.

19) Admitted.

20) Admitted.

[942] 21) Admitted.

22) Admitted, except for third sentence, which is denied as stated. Charles L. Watson, Jr., makes mortgage loans secured by residential, commercial and farm property.

23) Admitted, except for the last sentence which is denied as stated. Current interest rates charged by Prudential on their different types of loans vary according to the type of loan and the period for which it is made from 5¼ percent to 6¾ percent.

24) Admitted, except for the first sentence, which is denied as stated. Central Kentucky Mortgage Company, Inc., acts

as a mortgage loan correspondent or broker for permanent investors in mortgage loans secured by residential and commercial property. Over 98 percent of the loans serviced by Central Kentucky Mortgage Company, Inc., are secured by mortgages on residential property and the remainder are secured by mortgages on commercial property. The Company is servicing no industrial loans.

25) Admitted.

26) Admitted, except for the third sentence, which is denied as stated. Central Kentucky Mortgage Company had lines of credit with four Lexington banks totaling $850,000. The total maximum lending limits of all six Lexington banks was $1,395,000.

Central Kentucky Mortgage Company had additional lines of credit with banks outside Lexington as follows:

(a) First Lincoln National Bank, Louisville, Ky.—$200,000;

(b) First National Bank, Boston Mass.—$400,000;

(c) Peoples National Bank, Paducah, Ky.—$100,000.

First National Bank, Boston, is located in the same city as John Hancock Mutual Life Insurance Company and Central Kentucky Mortgage Company uses its line of credit with that bank to warehouse its John Hancock loans.

[943] 27) Admitted, except for the third sentence, which is denied as stated. About 2 percent of the number and dollar volume of outstanding loans held by Central Kentucky Mortgage Company were loans secured by mortgages on commercial property.

28) Admitted.

29) Admitted.

30) Admitted.

31) Admitted.

32) Admitted.

33) Denied as stated. As of December 31, 1960, the Federal Land Bank Association of Lexington had 326 loans outstanding, with a total unpaid balance of $4,663,641, of which 89 loans, with a total unpaid balance of $1,705,195.87 were to borrowers in Fayette County, Kentucky.

34) Admitted, except for the second sentence, which is denied as stated. The interest rate charged for its loans varies from 4 percent to 6 percent.

35) Admitted.

36) Admitted.

37) Denied as stated. College of the Bible, located on South Limestone Street in Lexington, Kentucky, has certain endowment funds which it invests in first mortgages on real estate. However, in recent years it has not advertised itself as a lender due to the fact that it has insufficient uninvested funds. As of June 20, 1961, College of the Bible had no funds available for lending.

38) Admitted.

39) Admitted.

40) Admitted.

41) Denied as stated. Transylvania University maintains a general investment fund which it uses to invest in first mortgages on real estate. However, it has only a limited amount of funds available and, as of June 21, 1961, the total amount of its funds available for lending was $40,000.00.

[944] 42) Admitted.

43) Admitted.

44) Admitted.

45) Admitted.

46) Admitted.

47) Admitted.

48) Admitted.

49) Admitted.

50) Admitted.

51) Admitted.

52) Admitted.

53) Admitted.

54) Admitted.

55) Admitted, except for the third sentence, which is denied as stated. Redman Mortgage Company makes mortgage loans secured by farm and commercial property.

56) Admitted.

57) Denied as stated. In 1959 Redman Mortgage Company made a total of 10 loans secured by farm property for $594,000.-00, of which $423,000.00 was on farm property located outside Fayette County. In addition, it made one loan for $10,500.00 secured by city property located in Lexington.

58) Denied as stated. Of the farm loans made in 1960, 4 of them for $380,000.00 were secured by farm property located in Bourbon, Jessamine and Breckenridge Counties.

59) Admitted.

60) Admitted.

61) Denied as stated. In 1961 Redman Mortgage Company was servicing a total of 43 loans, including some loans secured by mortgages on commercial and business property.

[945] 62) Admitted.

63) Admitted.

64) Admitted, except for subsections (e) and (k), which are denied as stated. These subsections should read as follows: (e) Union Central Life Insurance Company and (k) Providence Institute for Savings, Providence, R.I.

65) Admitted that, as of December 31, 1960, Realty Mortgage Company had a total dollar volume of mortgage loans of $30,322,813.61. Plaintiff has neither knowledge nor information sufficient to form a belief as to the truth of the remaining facts set forth in paragraph (65).

66) Admitted.

67) Admitted.

68) Admitted.

69) Admitted.

70) Admitted.

71) Admitted, except for subsections (c), (f), (g), (i), (j), and (k), which are denied as stated. These subsections should read as follows: (c) $4,260,000.00 for East River Savings Bank; (f) $103,000.00 for Midland Mutual Savings Company; (g) $2,000,000.00 for Bronx Savings Bank; (i) $1,500,-000.00 for F.N.M.A.; (j) $1,600,000.00 for City Savings Bank; (k) $887,000.00 for Providence Institute for Savings.

72) Admitted.

73) Admitted.

74) Admitted.

75) Denied as stated. The loans outstanding of Kentucky Growers Insurance Company as of December 31, 1960, included loans secured by mortgages on residential property and on farm property which was located outside Fayette County.

76) Admitted.

77) Admitted.

78) Admitted.

[946] 79) Admitted.

80) Admitted.

81) Admitted.

82) Denied as stated. W. H. Smith, an attorney whose offices are in the Central Bank Building, Lexington, Kentucky, operates a wholly-owned company known as "Phoenix Mortgage Company," which makes and services loans for Life & Casualty Insurance Company of Nashville, Tennessee. Phoenix Mortgage Company makes and services loans on residential property, and it makes loans on commercial properties but does not service such loans. However, the Phoenix Mortgage Company has not made a loan secured by residential property since December 1959, and has not made a loan secured by commercial property for at least four years.

83) Admitted.

84) Admitted.

85) Denied as stated. The residential mortgage loans made by Phoenix Mortgage Company are amortized over periods ranging from 12 to 20 years, but over 90 percent of them are for 20 years. The interest rate on these outstanding mortgages varies from 4 percent to 6 percent.

86) Admitted.

87) Denied as stated. The term of the loans made by John G. King varies from 15 to 20 years, but most of them are for 20 years.

88) Admitted.

89) Admitted.

90) Admitted.

91) Denied as stated. In the year 1960, Central Baptist Hospital Credit Union made 133 loans for a total dollar volume of $33,124.18. Since its organization in 1954 it has made a total of 855 loans, for a total dollar volume of $68,176.40.

92) Admitted.

93) Admitted, except for second sentence, which is denied as stated. The interest rate charged for its loans varies from mit a member to invest in excess of $2,000 in its shares.

[947] 94) Admitted.

95) Admitted.

96) Admitted.

97) Admitted.

98) Admitted.

99) Denied as stated. As of October 5, 1961, Central Kentucky Production Credit Association had 108 loans outstanding for a total dollar volume of $462,870.25.

100) Admitted.

101) Admitted, except for the second sentence, which is denied as stated. Laclede Bond and Mortgage Company sells the loans which it originates to:

(a) Metropolitan Life Insurance Company;

(b) Life Insurance Company of Virginia;

(c) Washington National Life Insurance Company; and

(d) Federal National Mortgage Association.

102) Admitted.

103) Admitted.

104) Admitted.

105) Admitted.

106) Admitted.

107) Admitted.

108) Admitted.

109) Admitted, except for the fifth sentence, which is denied as stated. Its loans which are secured by chattels bear interest at the rate of 1 percent per month on the unpaid balance if the term of the loan does not exceed 5 years, and 6 percent per annum if the term of the loan is from 5 to 15 years. Loans secured by mortgages on real estate bear interest at the rate of 6 percent per annum.

[948] 110) Admitted, except for the third and fourth sentences, which are denied as stated. As of December 31, 1960, the Credit Union had share accounts of $301,172.47. The Credit Union may require a member to give 30 days' notice

in writing of his intention to withdraw the whole or any part of the amount paid in by him on account of shares.

111) Admitted.

112) Admitted.

113) Admitted, except for the third sentence, which is denied as stated. The Credit Union has the right at any time to require the members to give in writing not more than 60 days' notice to withdraw the whole or any part of amounts paid in by them.

114) Admitted, except for the third and fourth sentences, which are denied as stated. As of December 31, 1960, the Credit Union had share accounts of $14,741.08. As of that date it had 1,334 members, of which 900 to 950 were employed at the Square D plant in Fayette County. The facilities of Square D Federal Credit Union are available to all employees of the Square D Corporation, many of whom are located in other parts of the country.

115) Admitted.

116) Admitted, except for the third and eighth sentences, which are denied as stated. The Lexington Signal Depot Employees Credit Union has the right at any time to require its members to give in writing 30 days' notice to withdraw the whole or any part of amounts paid in by them. As of June 30, 1961, it had share accounts of $1,239,393.01.

117) Admitted, except for the third and fifth sentences, which are denied as stated. As of December 1, 1960, Good Samaritan Hospital Federal Credit Union had share accounts of $41,078.51. Since organizing in 1955 it has made a total of 972 loans for a total dollar volume of $219,151.68.

118) Admitted, except for the third and sixth sentences, which are denied as stated. As of December 31, 1960, I.B.M. Federal Credit Union had share accounts of $57,799.91. As of September 30, 1961, it had a [949] total of all outstanding loans of $168,174.01 and total share accounts of $159,800.83.

119) Admitted, except for the fifth sentence, which is denied as stated. As of December 31, 1960, the USPH Federal Credit Union had share accounts of $271,571.04.

B) Plaintiff admits that each of the documents attached to and listed in paragraphs (1) to (20) of subsection (B) of Defendant's Request for Admission of Facts And Genuineness of Documents is genuine and that the figures stated thereon are true and correct.

/s/ LARRY L. WILLIAMS,
/s/ MELVIN SPAETH,
/s/ GEORGE J. MITCHELL,
/s/ LAWRENCE F. NOBLE,
Attorneys, Department of Justice.

[950] [Certificate of service omitted in printing]

[1] In the United States District Court, Eastern District of Kentucky at Lexington

UNITED STATES OF AMERICA, PLAINTIFF

vs.

FIRST NATIONAL BANK AND TRUST COMPANY OF LEXINGTON, ET AL., DEFENDANT

No. 1424

Transcript of Testimony and Proceedings—February 19, 1962

APPEARANCES

For the Plaintiff: Larry L. Williams, Melvin Spaeth, George J. Mitchell, Lawrence F. Noble.

For the Defendant: John L. Davis, Rufus Lisle, Robert M. Odear, Gladney Harville.

Case No. 1424, styled United States of America vs. First National Bank and Trust Company of Lexington, et al., was called for trial in the United States District Court for the Eastern District of Kentucky, at Lexington, at 10:00 a.m., February 19, 1962, His Honor H. Church Ford, Judge of said Court, presiding.

[2] PROCEEDINGS

The COURT. We have some assistant reporters here, I see, this morning. Mr. Clerk, you may swear them.

(Whereupon, Howard M. Hudson and Charlie L. Benton, the assistant reporters, were sworn by the Clerk.)

The COURT. Gentlemen, are you ready for trial?

For the Plaintiffs?

Mr. WILLIAMS. The Government is ready, your Honor.

Mr. HARVILLE. We are ready, your Honor.

The COURT. Defendants are ready.

I understood, Mr. Williams, that the Government's attorneys desire to make a brief opening statement. I will hear you, sir.

Opening statement on behalf of the Government by Mr. WILLIAMS:

Mr. WILLIAMS. May it please the Court, this is a Civil anti-trust action brought by the United States under Section 4 of the Sherman Act to prevent and restrain continued violation by the Defendants of Section 1 and 2 of the Sherman Act. The original complaint in this action was filed on March 1, 1961, and an amended complaint filed on March 4, 1961.

The amended complaint names as Defendants First Security National Bank and Trust Company of Lexington, the bank resulting from the consolidation of the First National Bank and Trust Company of Lexington and Security Trust Company, the consolidating banks.

[3] The offenses charged arise out of an agreement of consolidation and plan of reorganization entered into by the consolidating banks on or about December 3, 1960, and subsequently approved by the respective boards of directors of each consolidating bank. On the same day the complaint in this action was filed, that is, March 1, 1961, the Agreement of Consolidation and Plan of Reorganization was placed into effect, thus consolidating the two banks into a new corporation, the Defendant, First Security National Bank and Trust Company of Lexington.

The Complaint seeks an adjudication that the Defendants have unreasonably restrained, unlawfully combined to monopolize and have attempted to monopolize interstate trade and commerce in commercial banking in the Lexington area, or Fayette County, Kentucky, in violation of Sections 1 and 2 of the Sherman Act, and prays that the Court set aside the unlawful transaction.

As Your Honor is aware, Section 1 of the Sherman Act makes unlawful every contract combination in the form of trust or otherwise or conspiracy in restraint of trade or commerce among the several states. Section 2 of the Sherman Act provides that every person who shall monopolize or attempt to monopolize or combine or conspire with any other person or persons to monopolize any part of the trade or commerce among the several states is guilty of a violation of Section 2 of the Sherman Act.

[4] Here the Defendants are charged with the combination to monopolize and with an attempt to monopolize trade and commerce in commercial banking in the Lexington area. They are not charged with monopolization.

The Complaint sets forth the essential terms of the offenses as the consolidation or combining of all the assets, operations, and services of the Defendant, consolidating banks, thereby eliminating all competition between them, and the acquiring of control of over fifty-three percent of the dollar value of all assets and over 52 percent of the dollar volume of all deposits in commercial banks in the Lexington area, and about 55 percent of the dollar volume of all loans made by commercial banks in the Lexington area, and over 94 percent of all the dollar value of all trust accounts handled by commercial banks in the Lexington area, thereby obtaining a size which is approximately three times that of each of the remaining competitive commerical banks in the Lexington area.

The Government will show that the consolidation resulted in the total elimination of substantial competition between two well-managed and highly profitable banks which were in direct and active competition with each other prior to March 1, 1960. The net profits of Security Trust increased from $192,919 in 1958 to $220,057 in 1960.

The net profits of First National increased from [5] over $293,000 in 1956 to over $552,000 in 1960.

Prior to consolidation, First National, by far the largest bank in Lexington, had total assets of over $59 million and total loans and discounts of about $33 million, or about 40 percent of such assets, deposits, and loans among commercial banks in Lexington.

Moreover, First National, the second largest bank and trust business, handled trust accounts amounting to over $31 million, representing about 44 percent of the total value of all trust accounts held by commercial banks in the area. Security, on the other hand, had total assets of over $20 million, total deposits of over $15 million, and total loans and discounts of over $12 million, representing about 13 percent of assets, 12 percent of deposits, and 15 percent of loans among commercial banks.

In addition, Security, the largest trust bank in Lexington, handled about $36 million of trust accounts, or about 51 percent of the dollar value of trust accounts handled by commercial banks located in this area.

We will prove that First National and Security performed most, if not all, types of commercial banking activities, and that each competed directly and actively with each other, and the other smaller banks in the Lexington area in the performance of such activities.

We believe Your Honor can take judicial notice of the [6] fact that Defendant, First Security, is and each of the consolidated banks were engaged in interstate commerce. We shall undertake, nevertheless, to prove that fact. We also think that Your Honor can properly take judicial notice of the fact that commercial banking is a part of trade and commerce within the meaning of the Anti-trust Laws.

But we shall also undertake to prove that fact.

Further, we shall prove that in addition to commercial banking being a part of trade and commerce, various component functions of commercial banking treated separately are each part of trade and commerce, and that the consolidation of the Defendant banks violates the Sherman Act with respect to each component part.

These include the receipt and servicing of demand deposit accounts, the making of commercial industrial loans, single payment loans to individuals, loans secured by mortgages on commercial property, FHA Title 1 loans, and the rendering of Trust Department services.

These functions of commercial banking are each substantial. For example, as of December 31, 1960, First National had over $44 million in demand deposits which represented over 75 percent of its deposits, while Security Trust had over $12 million such deposits representing over 60 percent of its deposits.

In the field of commercial industrial loans, First [7] National as of December 31, 1960 had over $7,500,000 in such loans, representing over 21 percent of its total loans and discounts. At the same time, Security had over $3 million in such loans, representing over 25 percent of its total loans.

In the field of single payment loans to individuals, the combined Defendant bank had over 71 percent of all loans made by commercial banks in the Lexington area. The importance of the trust business conducted by the Defendant, consolidating banks, has already been mentioned.

The consolidating bank has trust assets of over $66 million, representing over 94 percent of the total trust assets of all commercial banks in Fayette County.

Included in such trust assets are a substantial portion of the real estate in the prime commercial area of Lexington, 56 farms, with a total of 16,299 acres, and substantially all of the stock of the Lexington Herald-Leader Company, the only newspaper published in Fayette County.

We believe that the geographic area in which to gauge the effect of the consolidation is Fayette County.

It is here that the Defendant banks and their competitors have their main offices in sight of each other. It is here that they obtain the overwhelming portion of their business. It is here that a very substantial amount of existing [8] competition between the consolidating Defendant banks was eliminated, thereby creating a clearly dominant banking institution which their much smaller competitors must face until corrective action can be taken by this Court.

The consolidated bank was permitted to come into existence, as your Honor knows, by the Comptroller of the Currency pursuant to provisions of Section 18(c) of the Federal Deposit Insurance Act as amended by the so-called Bank Merger Law of 1960.

The Government believes and contends that the granting of such approval under that Act in no wise immunizes the transaction from the Sherman Act. We believe that the plain words of the statute, the Report of Congress in passing the amendment to the Federal Deposit Insurance Act, and the decided Court cases make abundantly clear that the Sherman Act is fully applicable to bank mergers.

And in this connection, we plan to offer in evidence the reports of other government agencies, two of which were banking agencies, which advised the Comptroller pursuant to law of the serious adverse effects of the consolidating banks on competition which would result from that consolidation. We think these reports are highly relevant in this action since pursuant to law they concern themselves with competitive aspects of the consolidation, whereas the Comptroller was also concerned [9] with so-called banking factors.

Now, as I mentioned earlier, the Defendants are charged with three separate offenses of the Sherman Act. The Government contends and intends to prove that total elimination of very substantial competition between the consolidating banks is an unreasonable restraint of trade and commerce in commercial banking, particularly in the competitive setting of commercial banking in Fayette County. The Government contends and proposes to prove that consolidation is also an unlawful combination to monopolize and is an attempt to monopolize an appreciable part of trade and commerce in commercial banking under Section 2 of the Sherman Act.

As your Honor knows, having tried the American Tobacco Case, as well as other anti-trust cases, it is not necessary to prove actual monopolization or actual exclusion of all competitors, or intent even to exclude all competitors in order to prove a charge of a combination or attempt to monopolize. As was said in the Supreme Court in the Second American Tobacco Case upholding your Honor's instructions to the jury, and I

quote: "A combination may be one in restraint of trade or commerce or to monopolize a part of such trade or commerce in violation of the Sherman Act, although such restraint or monopoly may not have been actually attempted to any harmful extent."

[10] It was recently stated in the Second Circuit Court of Appeals in the case of the United States versus Consolidated Laundries Corporation and others: "Section 2 makes it unlawful to conspire to monopolize any part of interstate commerce without specifying how large a part must be affected. Hence, it is enough if some appreciable part of interstate commerce is the subject of the conspiracy."

We submit the consolidation of First National and Security is an unlawful combination to monopolize, an unlawful attempt to monopolize interstate trade and commerce in commercial banking and various aspects thereof in Fayette County, Kentucky in violation of Section 2 of the Sherman Act.

The Government contends that the consolidation violates Section 2 because each of the consolidating banks was a profitable and substantial commercial bank in active competition with each other in Fayette County, Kentucky. And, when they combined to consolidate and did consolidate, they thereby intentionally and knowingly combined it into an institution with over 53 percent of the dollar volume of all assets, over 52 percent of the dollar volume of all deposits, and about 55 percent of the dollar volume of all loans made by commercial banks in this area, and over 94 percent of the dollar value of all trust accounts handled by commercial banks, and similarly high percentages of other aspects of commercial [11] banking in Fayette County, Kentucky with knowledge that the combined institution would result in a size approximately three times that of its next largest competitive bank and some four to five times that of each of the remaining competing commercial banks in Fayette County with resulting substantial competitive advantages over smaller rivals.

Thank you, Your Honor.

Opening statement on behalf of the defendant by Mr. HARVILLE:

Mr. HARVILLE. If it please the Co.. t, the issues which the Defendant deems to be material to a disposition of this controversy have been included in a statement of issues that have been filed in the record herein. Some of those issues are strictly legal issues. Others are factual issues.

It shall not be my purpose to expound upon each one of those, nor to go into any detailed statement of any figures or other facts. I simply desire, which I think is the purpose of this statement, to acquaint the Court with the position that the Defendant takes in the defense of this action.

We are charged with an unreasonable restraint of trade in interstate trade and commerce in violation of Section 1 of the Sherman Act. To accomplish that, the Government says, first of all, that the elimination of all competition between these two institutions constitutes a violation of that. I think [12] to determine that, it is simply relevant to determine what that competition was. And, of course, it was eliminated by this merger. There is no longer two institutions; there is just one. If that constitutes a violation, after having determined what that competition was, then there is no question about it. It does not exist any more. The competition is gone.

They say, however, further that a restraint of trade in violation of Section 1 exists because largely of the size of the resulting institution. In saying that, we take the position that the Government is not aware of the nature of banking; that banking differs from any other ordinary free private commercial enterprise in several respects: (1) Banking is one of the most highly regulated industries in the country today. It is so regulated that competition in it, where it has been found by actual experience to be harmful to the banking industry itself, has been completely eliminated. In other areas where unrestrained competition, if it was allowed to exist, would be harmful, it has been restrained or cut down.

So that banking, we say, is wholly different from any other enterprise. Why does this regulation exist? We say it is because of two reasons: (1) The industry itself is so highly affected with the public interest, in that the public's money is involved. They are dealing with the public's money really.

It is the public's money; the public has deposited the money with [13] them. In order to insure the safety of that money, the Government has found it desirable, actually necessary, by hard experience to regulate the banking industry itself and to protect the funds of the public.

Unregulated, unrestrained competition in banking has been found by actual experience through the Depression not to be helpful to the country, and, in fact, to be harmful altogether. That fact alone, we think, distinguishes the banking industry itself from the ordinary private enterprise. Another facet of it is that whereas the normal free enterprise owns its assets that it uses in performance of its business duties, banks do not. The main raw material that they deal with is money. And that money is not theirs except as a debtor-creditor relationship.

They owe the money. They don't own what they deal with in their everyday business. Therefore, all of this competition, we say, brings us to this point: that competition is permitted in some areas. And in those areas where it is permitted, there is no denying it; it is keen where it is permitted. But where it would be harmful, it is prohibited, and competition, therefore, has been subordinated to a more strong public policy of maintaining a strong, sound, healthy banking system.

Unrestrained competition has been found to be harmful to that. Therefore, we say that competition in banking is wholly different from competition in the ordinary private free [14] commercial enterprise, and that the Government's stand that the hard, full force of the Sherman Act should be applied to banks the same as it is to any ordinary private commercial enterprise will not stand the test of examination on that basis.

Therefore, these banks must stand in a different category. The Act itself under which these banks merged provided that the Comptroller, in passing upon it, should consider six banking factors and, last, the effect of the merger or consolidation upon competition including any tendency toward monopoly.

In passing upon them, Congress did not specify a standard of the Sherman Act itself, the cold steel of the Sherman Act; it specified a standard which includes six banking factors as well as one competitive factor.

Now, by reason of the peculiar situation that the banks stand in by reason of the regulation and by reason of the fact that they do not own the raw material or the assets that they operate on, we say that competition in banking is so different from what it is in the ordinary free private commercial enterprise that size itself standing alone does not give them power to dominate or to control the other local banks in what they shall do. They are free to do as they please.

And, in fact, we will show from actual experience of [151] operation here in Lexington such things as this:

We have charts showing the actual size of the respective banks from 1935 to 1960. In the year 1942, First National itself held more deposits, more loans, and more total assets proportionate to what the other local banks held than the merged bank held at the time of its consolidation.

By 1953, eleven years later, its percentage holdings had dropped some 15 to 16 percent, so that it had dropped from 53 or 54 percent of the total of all deposits, loans, and resources to less than 40, and in some instances 38 percent, of what the other banks held. That, we think, amply demonstrates the propositions which we have put to the Court.

Another thing: taking the period from 1945 to 1960 and simply because the banks that now exist were in existence in 1945, we find that in terms of actual dollars of new business, deposits acquired by each of the local banks, the smallest bank at the beginning of that period in 1945 acquired almost as much in new deposits as did the largest bank for that fifteen-year period. So that size itself does not give a power to dominate the other local banks. Experience shows the contrary to be true.

Furthermore, taking the figures of the two local banks at the end of 1960 and putting them together, consolidating them, finding out how much they held as a percentage of the total loans, deposits, and resources of the local banks as of that [16] time, and comparing that with the year-end figures of 1961 when as a merged bank we were in competition with these other local banks for nine months of that period, mind you, the figures show that the merged bank lost its relative standing in competition with the other local banks.

We think there can be no stronger proof than that to show that size itself does not give the power to dominate or to monopolize the local banking business.

Next of all, considerable emphasis has been placed upon the trust field. We will go into the history of the trust activities as they pertain to commercial banks here in Fayette County. And we think that history will amply explain why the situation that the Government thinks is so bad exists today. First of all, just briefly, that history will show that The Security Trust Company, one of the merging banks here, was formed at the behest of the other local banks to serve as a trust institution, because the other local banks did not want to be concerned with doing of trust business. That situation continued for some time. And, in fact, other local officers of other local banks served as Directors of the Security Trust Company because they considered it something separate. The trust business went to Security Trust Company by reason of that fact. And it went there over a period of some seventy-five years until this merger.

[17] In 1940 or thereabouts the First National Bank entered the trust field and tried to build itself a Trust Department. It has succeeded because it made a sincere and effective effort. It went to the necessary expense. It put forth the necessary effort. And it did acquire a substantial amount of trust business.

The other trust departments of the other local banks, we say, have been maintained largely as an accommodation to the commercial departments of their banks and to give trust service if someone requests it. They have not, we say, aggressively sought the trust business. And they have not gone to the expense of acquiring it.

We say that the trust business is no different in this respect than any other phase of commercial banking; that if they are willing to go to the necessary expense and put forth the necessary effort, they can acquire it the same as anyone else.

The only difference in the trust field and in the commercial banking field is the nature of the competition that exists for them from non-banking sources. Individuals largely have from time immemorial—and we have charts for a twenty-two-year

period showing that individuals got more of the actual probate work, trustees, administrators, executors, the handling and settlement of estates—that individuals have done more during that period of time than have all the [18] banks put together in this county.

Now, for non-banking competition, we think the Court is entitled to consider the competition which banks do face from non-banking sources. We take the position that banking is unique and peculiar in this sense, in that banking is highly regulated, regulated to some extent more than monopolies; and yet it is subjected to keen competition from non-banking sources. And those sources much of the time are not regulated in the same degree that banking is. They have actual advantages over banks in securing and performing the services that they do perform. The only service of commercial banks that we say is unique to them and is not duplicated by any other financial institution is the demand-deposit function.

No other institution, we concede, is allowed to hold demand deposits, those which are categorized as such and are, in fact, withdrawable upon demand. Others will let you have them upon demand, but they are not strictly demand deposits. They are more in the nature of and comparable to time deposits of banks.

[19] Now, why the merger? The Government seeks to say that we merged in order to create a restraint of trade or in order to monopolize or to attempt to monopolize commercial banking in this area. We think the reasons for this merger are ample, that they are good, sound business reasons for the banks and for the public—the need which we say was present by reason of some of these facts. There are others, but I will simply run through some of them.

The larger depositors, the larger borrowers, in this area were having to go outside this area to obtain satisfaction of their banking needs, their loans. That naturally draws money from this area and takes it to some other area—Louisville or Cincinnati, for instance—because they must maintain their deposit balances there. And of course it is to some extent harmful to the economic situation as it exists here.

No bank has grown as fast as the population and the industry of this area. The great and tremendous growth that this area has experienced in the last fifteen years has completely outstripped the growth of banking.

Many large industries have come to this area, but they have not brought sufficient funds to even accommodate the many, many laborers and other employees that they have brought here. Those laborers need funds to buy homes with. [20] They need the service industries that service these large industries and need funds to take care of any small business—service stations, laundries, and such things as that.

The influx has created additional needs for funds, and the banks simply have not grown and kept pace with it. The ratios of loans to deposits in this area are substantially higher than they are on a national average. The banks have gone as far as they could to satisfy those needs; but still they have not been able to do it.

The money simply is not here. The merger we contemplate will, we hope, alleviate that situation. We don't say it is a panacea or a cure for every ill that exists; but we do think there is reason to believe that it will help to relieve that sort of a situation in two respects.

One, we hope as a merged bank to create a correspondent banking department sufficient to obtain a fair share of the business in that field that now goes to Louisville and to Cincinnati and to the other larger banks.

We are ideally located geographically to serve Central and Eastern and Southeastern Kentucky in that respect. We think that the whole state would stand to profit if we could have some of those correspondent bank balances in Lexington available for the economy of this area and Kentucky as a whole, rather than have them go to Cincinnati and serve Ohio, [21] or to go to Louisville and serve a metropolitan area down there, which would not be concerned with the economic ills of Eastern Kentucky primarily.

It works both ways, we think. If we can help ourselves and help ourselves locally, then it stands to reason that we would be able to help them. Why merge to do that? We think that

a larger bank is more able to effectively compete with Louisville and with Cincinnati for the needed funds in this area to do that.

There was no thought, no desire, no intent, to monopolize or to create any restraint of trade from this merger. The desire was to create a sound bank. These banks complemented themselves as much as any two banks could by reason of a merger.

The First National was a large deposit bank with a small capital structure, relatively speaking, to its deposits—some $60 million in deposits and $2.5 million in capital and surplus, with slightly over $2 million in undivided profits.

The Security Trust had almost as much capital as did the First National, but it was small in terms of deposits. The First National needed capital; Security needed deposits. The merger itself, we say, was such that the two banks complemented each other and that it was highly desirable and [22] effected all of the ends that we say are necessary if we are to progress with the community and if the community is to progress with us.

It is an intertwining thing, and you can't separate one from the other. They both go with each other so well. There was no intent, design, or desire to monopolize, as I say. There was an intent or desire to create a strong healthy bank, which we think to be one of the primary aims of all examining authorities, the Government itself, all of the laws, and to help the economic life of this area; and, of course, in turn, if that follows, it naturally would benefit the stockholders.

We say there is no restraint of trade, there is no monopoly, and no attempt to monopolize anything in banking in this area.

Thank you, sir.

The COURT. Call your witness.

OFFERS IN EVIDENCE

Mr. WILLIAMS. Your Honor, the Government would like to offer at this time the Plaintiff's request for the admission of certain facts, and the admissions of the Defendent, which have been filed and are part of the record in this case.

The COURT. That will be filed.

Mr. WILLIAMS. Next, your Honor, the Government would like to offer in evidence documents which fall into [23] two categories. Part of the documents have been stipulated to, to the effect that they may be introduced in evidence in behalf of the Plaintiff without further authentication, and that the same are competent and relevant.

The second category of documents is covered by a stipulation which states that "The information contained in the charts and tables listed below is true and correct, and such charts and tables may be offered in evidence in behalf of the Plaintiff without further proof of the facts therein contained, but subject to objection by either party by reason of competency, relevancy, and materiality.

"The documents listed below are authenticated copies of what they purport to be, and may be offered in evidence without further proof of authentication, but subject to objection by Defendent by reason of competency, relevancy, and materiality; that Defendent does not admit the truth of any information stated in said documents."

We would like at this time, your Honor, to offer the documents.

May it please the Court, we have all of the documents bound in folders with a copy of the stipulation in front. So if I may at this time, I would like to offer the documents listed in the folder.

The COURT. Let them be identified in some proper [24] way.

The CLERK. May they be identified as Exhibit No. 1, your Honor?

The COURT. Yes, I suppose so.

Mr. OBEAR. I don't believe the whole group of documents should be listed as Exhibit No. 1. Don't you want separate numbers?

The COURT. What is this you are handing up here?

Mr. WILLIAMS. Your Honor, these are copies of the documents we propose to offer in evidence. If it is agreeable with your Honor, I will at this time identify the documents so they can be marked individually.

The COURT. Certainly the categories of documents ought to be separated by proper markings. The category of documents which both parties have stipulated to might be introduced in evidence by one party or the other, or both, without objection. Have you handed that category to the Clerk?

Mr. WILLIAMS. Yes, sir, your Honor, a copy has been handed to the Clerk listing the stipulation and the documents referred to.

The COURT. That is category No. 1?

Mr. WILLIAMS. Category No. 1, yes, sir.

The COURT. Let it be marked and filed as Exhibit [25] No. 1.

The CLERK. I will mark the stipulation as Exhibit No. 1.

The COURT. Does the stipulation embrace the documents?

The CLERK. The documents are attached to the stipulation, your Honor.

Mr. DAVIS. I think the stipulation embraces both categories of documents, if your Honor please.

The COURT. The stipulation embraces both categories?

Mr. DAVIS. That is correct, yes, sir.

The COURT. Let the stipulation be filed and marked as Exhibit No. 1.

The CLERK. The stipulation will be Exhibit No. 1 for the Plaintiff.

(The above-mentioned stipulation was filed with the Clerk and marked Plaintiff's Exhibit No. 1.)

The COURT. Category No. 1 can be given a different identification because it bears a different relation. That is the undisputed, unqualified evidence, as I understand it. Let that category No. 1 be marked——

The CLERK. It is all attached here.

[26] Mr. WILLIAMS. The blue sheet separates the two categories.

The CLERK. Is the blue sheet now category No. 1?

The COURT. Come over here and show him.

Mr. DAVIS. If your Honor please, it seems to me that—while we might take a little bit of time right now—it might be preferable, since the various documents will be referred to at different points in the evidence, to have the Clerk mark each of the documents with a separate exhibit number.

The COURT. How many separate documents are tendered here?

The CLERK. There are twenty-nine listed in the stipulation, your Honor.

Mr. DAVIS. I think they should be marked Government Exhibits 1 through 29.

Mr. ODEAR. The stipulation can be No. 1, and then the exhibits can be marked from 2 through 32. It will be almost necessary to have separate identification numbers.

The COURT. I can see where it may be almost essential to have the documents bear separate numbers. Once the documents are together, it is difficult.

The CLERK. There are 104 instead of 29, your Honor.

[27] The COURT. Take the time to mark them.

Mr. DAVIS. I think they ought to be marked as separate exhibits.

The CLERK. I think maybe the attorneys ought to get their numbers, if we have 104 to mark.

(A brief recess was taken to mark the exhibits.)

The COURT. Mr. Clerk, the documents that were filed subject to reservations begin with what number?

The CLERK. Number 1 is the stipulation, your Honor. They go on through to 130, inclusive.

The COURT. 1 to 130?

The CLERK. Inclusive.

Mr. HARVILLE. It starts with 106.

The CLERK. 106 to 130, inclusive, are the ones covered by the reservation.

The COURT. Objections are reserved to documents 106 to 130?

The CLERK. Yes, your Honor.

(The above-mentioned documents were filed with the Clerk and marked Plaintiff's Exhibits 2 through 130, inclusive.)

The COURT. All right, gentlemen, you may proceed.

Mr. WILLIAMS. May it please the Court, I would like [28] to call as the first witness, Mr. Clarke. Will you take the stand, please.

Whereupon, ERNEST S. CLARKE, Jr. was called as a witness and, being first duly sworn, was examined and testified as follows:

The CLERK. The witness, your Honor, is Ernest S. Clarke, Jr.

Direct examination by Mr. WILLIAMS:

Q. Where do you live, Mr. Clarke?

A. Here in Lexington.

Q. What is your occupation?

A. I am a banker.

Q. With what institution are you associated?

A. Citizens Union National Bank and Trust Company.

Q. What position do you hold with that bank?

A. President.

Q. How long have you been in that position?

A. Since December 31, 1954.

Q. Prior to 1954 what was your experience?

A. I was president of The Union Bank and Trust Company.

Q. For what period of time?

A. From April 1, 1946, until December 31, 1954.

[29] Q. And prior to that?

A. I was the Vice President immediately prior to that——

The COURT. Talk a little louder; I would like to hear what you say.

The WITNESS. Prior to that, Judge, I was the Vice President of The Liberty National Bank and Trust Company in Louisville, Kentucky.

By Mr. WILLIAMS:

Q. Generally, Mr. Clarke, what type of banking services does your bank provide?

A. All commercial bank services, trust services, checking accounts.

The COURT. The present bank is Union National Bank?

The WITNESS. Citizens Union National Bank and Trust Company.

The COURT. What is the first word?

The WITNESS. Citizens Union National Bank and Trust Company.

The COURT. Citizens Union.

By Mr. WILLIAMS:

Q. What are some of the principal types of services offered by your bank?

A. Checking accounts, savings accounts, loans of all [30] kinds, safe deposit boxes, transfer of funds, Christmas clubs, vacation clubs, trust department, executorships, administratorships, trusteeships, corporate trusteeships, transfer agencies; registrars.

We try to provide a complete banking and trust service.

Q. Do you provide any correspondent bank services?

A. Correspondent bank facilities, collections.

Q. Mr. Clarke, what percent of your customers are located in Fayette County?

A. Approximately 95 percent.

Q. What percent of the total dollar volume of deposits and loans of your bank are received by or made to customers located in Fayette County, Kentucky?

A. I would say approximately 95 percent.

Q. Who are your competitors?

A. The other commercial banks in Lexington.

Q. Would you name those, please?

A. The First Security National Bank and Trust Company; The Bank of Commerce; The Second National Bank; and The Central Bank.

Q. Is your bank regulated by any agencies of the Federal Government?

A. By the Comptroller of the Currency and by the Federal Reserve System—we are a member of the Federal [31] Reserve System—and by the Federal Deposit Insurance Corporation.

Q. Mr. Clarke, are commercial banks different from other types of financial institutions?

A. Yes, sir, they are.

Q. In what respect?

A. Well, I think commercial banks are unique in that, in the manner in which they make loans, they create money, a medium of exchange. I think they are also unique in that they

handle the transfer of funds that is not available to my knowledge by any other means.

Those are the two aspects that I think are unique to the commercial bank field.

Q. Do demand deposits have any connection with the total supply of money in the United States?

A. As I understand the money supply, it consists of currency in circulation and demand deposits. Most demand deposits are created by loans. I think it is around 85 percent of the money supply which is accounted for by demand deposits.

Q. What types of institutions are engaged in trust facilities?

The COURT. You will have to keep your hand away from your mouth now so I can hear what you are saying.

[32] The WITNESS. Can you hear me now, Judge?

The COURT. I am hearing you very well, but this young fellow is talking through his hand.

The WITNESS. What was your question?

Mr. WILLIAMS. Will you read the question?

(The pending question was read.)

A. In Lexington, only the commercial banks.

By Mr. WILLIAMS:

Q. Mr. Clarke, are there any limitations imposed upon commercial banks by regulatory authority?

A. Yes, but I would like to explain that answer, if I may. We have regulations for two reasons. One is for the control of the money supply. The other is to protect the safety of the public's money entrusted to us.

We are not regulated any more than a corner grocery store from the areas of competition between commercial banks. The prices we charge for any of our services are subject to the discipline of competition the same as any other business. We are not regulated in the sense that a public utility is regulated.

Q. Are there any impositions by regulatory authority on the amount of money a bank can lend to a single customer?

A. Oh, yes. The national banks are limited to 10 percent of their capital and surplus to any one customer. We are [33] further limited in the amount that we can lend on real estate. Of course we are subject to examinations by the Comptroller of the Currency as to the goodness of all our loans.

But again, that is a regulatory procedure to protect the deposits of our customers, purely and simply.

Q. Is or is not a bank required to keep a high degree of liquidity?

A. Yes, it is. All of our deposits are practically payable on demand.

Q. In your opinion is there competition between commercial banks in the type and quality of services offered?

A. Yes, sir, to a very great extent.

Q. Is there competition in your opinion among commercial banks as to whom and the terms of loans that may be made?

A. Yes, sir.

Q. Is there competition in your opinion between commercial banks in trust business?

A. To a high degree.

Q. Is there competition between commercial banks in your opinion with respect to obtaining correspondent bank business?

A. Yes, sir.

Q. In your opinion is there competition between commercial banks in securing branch offices?

[34] A. Very obviously, sir.

Q. In your opinion is there competition between commercial banks in securing appropriate personnel to conduct the business of the bank?

A. The same as any other business.

Q. Is your bank in competition with other commercial banks in Lexington in these types of activities, or isn't it?

A. I would say in all activities.

Q. Mr. Clarke, what type of financial institutions are permitted to receive demand deposits?

A. Only a commercial bank.

Q. What is the approximate total amount of the deposits in your bank?

A. Approximately $30 million.

Q. What approximate percent of the total deposits in your bank are represented by demand deposits?

A. Approximately 75 percent.

Q. What is the other 25 percent?

A. Savings deposits.

Q. How are demand deposits withdrawn from a bank?

A. Just as the term implies—they are payable on demand. All a man has to do is write a check on his account to get it.

Q. Mr. Clarke, what type of loans does your bank make?

[35] A. We make commercial loans, industrial loans, consumer loans——

The COURT. I am not hearing you, quite. What is the second type?

The WITNESS. Industrial loans, consumer loans.

The COURT. What is that?

The WITNESS. Consumer loans, Judge.

The COURT. Consumer loans.

The WITNESS. Yes, sir. Do you understand what I mean by that?

The COURT. I don't know what consumer loans means.

The WITNESS. Those are loans to individuals to buy cars, to pay doctors' bills, to improve property, to take a vacation, to go fishing—anything that is in the nature of a loan to an individual that is not in a business undertaking.

The COURT. Go ahead.

The WITNESS. We make real estate loans in certain instances.

By Mr. WILLIAMS:

Q. Mr. Clarke, in connection with commercial industrial loans, what is the average term of those types of loans?

A. They are ordinarily ninety-day loans. Sometimes there are a few of them that are term loans—two, three, four [36] years, five.

Q. Is there any difference between secured and unsecured, as far as classification, of commercial industrial loans?

A. Well, many commercial industrial loans are made on a totally unsecured basis. There are also many of them that are secured, depending upon the strength of the borrower. I may have failed to have mentioned a minute ago that we make a good many collateral loans, both to businesses and to individuals.

Q. Could you define what is meant by commercial and industrial loans?

A. Well, I think the proper definition would be the purpose for which the money is to be used, and also in that same category, many collateral loans are made to engage in and conduct a business enterprise.

Q. Mr. Clarke, what percent of your total loans are represented by commercial industrial loans as classified by the reports you submit to Federal authorities?

A. I believe they run around 60 percent.

Q. With whom does your bank compete in making industrial and commercial loans?

A. Other commercial banks.

Q. Where?

[37] A. Here in Lexington.

Q. I believe you testified that you make real estate loans. What is the average term of those loans?

A. They are relatively short-term. We have been trying to hold to not over a ten-year maturity on those loans. We make many of them for less than that. I expect that our average maturity on our real estate loans is somewhere in the neighborhood of four to five years.

Q. What is the reason for that?

A. An attempt to maintain a liquidity which we consider essential to the sound operation of a commercial bank.

Q. Mr. Clarke, what is the type of loan that is classified as a non-farm, non-residential; mortgage loan?

A. Real estate loan? It is usually to a commercial enterprise on a commercial piece of property, or to an industrial enterprise on an industrial piece of property, or to a church——

Q. What is the average of that type of loans?

A. I would say again that probably the average maturity of that type of loan on our books is four or five years—something like that. We make them as long as approximately ten years. In a few instances we have made them longer than that. We try to maintain a liquidity even in that category of lending.

[38] Q. Does your bank make Title I FHA loans?

A. Oh, yes, and we can classify those under our consumer loans.

Q. With whom do you compete in making that type of loan?

A. Almost entirely with the other commercial banks. I think the building and loans make an insignificant amount of them.

Q. What other commercial banks?

A. The same ones I named previously, and only the ones here in Lexington.

Q. Mr. Clarke, in your opinion, to what extent, if any, are Lexington business people dependent upon local commercial banks for obtaining commercial industrial loans?

A. The average business in Lexington, particularly the borrowing business, is what I would call a small commercial and industrial enterprise is almost totally dependent upon commercial banks for working capital loans, and even other types of loans.

[39] By Mr. WILLIAMS:

Q. What commercial banks, Mr. Clarke?

A. The four other commercial banks in Lexington.

Q. What significance, if any, is there in making a loan to a borrower who is known to a bank and is located in the same area in which the bank is located?

A. Did you say what is the significance?

Q. Yes.

A. Well, that is about the only source to which he can look for working capital loans.

Q. Mr. Clarke, does your bank maintain accounts in other banks?

A. Oh, yes.

Q. What are those types of banks called?

A. We call them our correspondent banks.

Q. Where are they located?

A. We have one in Boston. We have two in New York. We have two in Chicago. We have one in Detroit. We have four in Louisville. We have two in Cincinnati.

Q. Would you name the banks in Louisville and Cincinnati with whom you have correspondent relationship?

A. In Louisville, we have The First National Lincoln, the Citizens Fidelity, the Liberty National, the Louisville Trust Company.

[40] In Cincinnati, we have The First National and the Central Trust Company.

Q. Are you required to maintain deposits in the Federal Reserve Bank?

A. Yes.

Q. Where is that bank?

A. Substantial deposits with the Cincinnati branch of the Federal Reserve Bank of Cleveland.

Q. What is the approximate amount of deposits you must maintain with the Federal Reserve Bank?

A. At present it is 12 percent of demand deposits and 5 percent of savings deposits.

Q. What types of services does a correspondent bank give you in return for your keeping deposits on account?

A. We use them to collect certain checks, to safekeep securities. We draw drafts on them for our customers. We consult with them on banking problems, investment problems, automation problems. They render many services to us.

Q. Are the services rendered by commercial banks valuable to your bank?

A. Very valuable, yes.

Q. What types of communication do you utilize in the placing or withdrawing of such accounts?

A. Well, we either handle it by draft or by telephone or [41] wire, depending upon the particular circumstances when the need arises.

Q. Mr. Clarke, in your opinion, do commercial banks in Lexington utilize interstate communication to conduct their normal banking business from day to day?

A. You have to.

Q. How many banks have correspondent banking relationships with you, or with your bank?

A. I don't recall the exact number. There are some twenty-odd.

Q. What general geographic area are they located in?

A. They are principally in fairly close proximity to Lexington. I would say fifty to seventy-five miles possibly.

Q. Are they all located in Kentucky?

A. Yes, sir.

Q. Do you or do you not consider your bank to be in competition with banks which your bank has a correspondent bank relationship with?

A. I do not, sir.

Q. Why?

A. I like to think of a correspondent relationship with a bank more as a partnership than as a competitor. We call on our correspondents to assist us with excess loans, and in many respects. We would not feel like we had the type of relationship that we desired if we felt that they were in competition with [42] us in any regard.

Q. In your experience, what is the practice among commercial banks with correspondent relationships seeking accounts in each other's area?

A. Just as I said, we don't feel that our correspondents are competing with us in Lexington at all.

Q. What is the general practice, Mr. Clarke, based upon your experience as far as correspondent banks soliciting business in each other's area?

A. Well, I can say this much: we would close any account immediately if we found them doing it.

Q. Mr. Clarke, what importance is there to a bank having a sizable number of other banks having a correspondent relationship with it?

The WITNESS. Repeat the question, please.

(The question was read by the reporter.)

The WITNESS. Well, geography has a lot to do with it. Location of the Federal Reserve Bank of your district has a lot to do with it. The nature of the deposits that are made in your own bank have a lot to do with it.

For instance, if we found that we were getting a lot of checks on San Francisco, for instance, we would feel the necessity probably to open a correspondent relationship with a bank in San Francisco.

[43] Q. Mr. Clarke, my question was directed at whether or not there is an advantage to a bank, for example, located in Lexington having a large number of correspondent banks that did business with it.

A. Yes. If their business requires it, there is an advantage to it.

Q. I believe you have testified that your bank operates a trust department?

A. Yes, it does.

Q. How long has it operated a trust department?

A. The Union Bank has operated a trust department since 1906 when it was originally organized. That is my understanding.

And the Citizens Bank and Trust Company was organized in 1931, and it operated a trust department. And I think its predecessor, the Guaranty Bank and Trust Company, had a trust department.

Q. What are some of the types of business conducted by your trust department?

A. We have executorships, administratorship, trusteeships, guardianships, committeeships, trustee under bond issues, a few registrars, I believe. We have just a general trust department.

[44] Q. Do you provide safe deposit boxes for your customers?

A. Yes, indeed.

Q. Do you engage in corporate trust business as well as personal?

A. We have some. We wish we had more.

Q. Has or has not your bank been actively seeking to increase its trust department activities?

A. Yes, sir, it has.

Q. Mr. Clarke, what are some of the advantages, if any, of dealing with a bank as far as trust business is concerned?

A. Well, we think it has many collateral values. The value of trust service, we think, is very complementary to a commercial banking operation. We think that commercial bank functions feed the trust department. We think in some instances the trust department feeds the commercial department. We think they are very complementary and necessary to a complete banking operation.

Q. Does your trust department advertise that it has continuous existence and financial responsibility?

A. Yes, sir. We think they are unique in that respect.

Q. Do you advertise or hold yourself out as being supervised by Government authority?

[45] A. I presume we do. We certainly are.

Q. Do you claim that your Commercial Trust Department can give specialization?

A. Yes. That is along the line of the principal reason that we think that a bank can provide so much more adequate trust service than an individual.

Q. Does it provide for group judgment?

A. Group judgment, yes, continuity of management, specialization, taxes, handling of stocks, bonds, real estate, many respects.

Q. What institutions in the City of Lexington provide trust services?

A. Well the principal one before the merger of the First and The Security were the individual First National and The Security Trust.

The Bank of Commerce has offered a trust service for many years. The Second National has only recently entered that field. And The Central Bank has just entered it.

Q. Does anyone other than the banks in Lexington advertise in the trust field?

A. No, sir, not to my knowledge.

Q. Mr. Clarke, how long does it take to build up a strong trust department in a bank?

A. Well, I would say it is a long, slow process.

[46] Of course, the success of it, I am sure, depends to a certain extent on the amount of promotion, the specialized employees hired, the aggressiveness with which business is sought. But in any instance it is a long, hard, slow process. And in most instances, it involves many years of not very profitable or unprofitable operation.

Q. Mr. Clarke, what is the best source for a commercial bank building up its trust department? What is the best source for its customers?

A. Its best sources are its own customers.

Q. In the Commercial Department?

A. In the Commercial Department, yes.

Q. In your opinion, does a bank with a large commercial department have a very good chance of building up?

A. A substantial advantage over a trust department that does not have any contact with that individual.

Q. Mr. Clarke, do you or do you not consider your bank to be in competition with First Security in the trust field?

A. We like to think we are, sir.

Q. Prior to March 1, 1961, did you or did you not consider your bank, First National, and Security Trust to be in competition each with the other in the trust field?

A. Yes, sir. We like to think so.

Q. What effect, if any, do you think First Security [47] by virtue of its having over 90 percent of the trust business handled by Lexington banks will have on the ability of your bank in Lexington to compete in the trust field?

A. I am very apprehensive about that.

Mr. LISLE. I object to that, sir.

The COURT. On what ground?

Mr. LISLE. It is based on an assumption. He is assuming a certain matter in his question which has not been testified to.

The COURT. Has there been any proof?

Mr. WILLIAMS. Your Honor, there is a document already admitted in evidence that shows that The First Security has over 90 percent of the trust business held by banks in Lexington.

Mr. LISLE. Begging your pardon, if the Court please, it shows that of the trust assets held, they had over 90 percent. But it does not necessarily follow that they had anything like that percentage of the trust business. They had the assets on the books which had been built possibly over a number of years.

The COURT. It obviously does not show the number of trust accounts simply because they have a majority of the trust business.

Mr. WILLIAMS. I will be glad to rephrase the [48] question, your Honor.

By Mr. WILLIAMS:

Q. Mr. Clarke, what effect, if any, do you think First Security, by virtue of it having over 90 percent of the trust assets

held by Lexington banks, would have on your ability to compete in the trust field?

A. I will answer that the same way. I am very apprehensive over it, sir. I think it is almost an unfair competitive advantage.

Mr. DAVIS. I submit the answer is not responsive. I object on the grounds that is is not responsive to the question.

The COURT. I overrule the objection. Go ahead.

By Mr. WILLIAMS:

Q. Did you finish your answer, Mr. Clarke?

A. Yes, sir.

Q. Why are you apprehensive?

A. Well, my principal apprehension is that under one roof our competitor having almost a monopoly in the existing trust assets in commercial banks with all of the advantages of ownership of real estate and control of farms would make competing for the business extremely difficult.

Q. Do you know whether or not the Security Trust Company owns a majority of the stock of the Lexington Herald-
[49] Leader?

A. I think it is a matter of public record as a codicil to Mr. John Stoll's will that they do.

Q. What significance do you think there is to competition of the First Security operating through its Trust Department controlling that publication?

A. Well, I think it is a very influential weapon. The influence of a good newspaper in a community is very, very great. It is the only newspaper published in Fayette County. Whether it uses this influence to further the First Security and by so doing damaging the other banks is certainly possible whether it does it or not.

Q. Mr. Clarke, what is the nature of the business conducted by savings and loan associations?

A. I think a savings and loan association is ordinarily defined as a financial intermediary. And that means, as I understand it, that it attracts the savings primarily of individuals and siphons them into mortgage loans, principally to assist individuals in owning their own homes.

Q. What is the average term of the loan made by a savings and loan association as compared with a bank?

A. They normally make much longer loans than a bank does.

Q. Do you consider your bank to be actively seeking [50] long-term mortgage loans?

A. No, I don't consider our bank in competition with building and loan associations for loans at all.

Q. What is the nature of the business conducted by mortgage companies?

A. Well, as I understand their business, it is principally representing the institutional investors such as the life insurance companies and the large eastern savings banks. They make loans primarily on residences and farms and long-term loans.

Q. Do you consider your bank to be in competition with these types of institutions?

A. Not at all, sir.

Q. What is the nature of the business conducted by small loan companies?

A. Well, I consider them in a field of making consumer loans that normally are not acceptable to a bank in its consumer loan department. They are allowed to charge much higher rates of interest by law.

I think the great majority of their loans involve greater risk than we feel justified in assuming for the rate of interest which we can charge on that type of loan.

Q. Do you or do you not consider your bank to be in competition with small loan companies?

[51] A. Practically not at all.

Q. What is the nature of the business conducted by Sales Finance companies?

A. Well, there are a few large companies in that category with offices in Lexington. And they are engaged primarily in what I refer to as consumer loans for the purchase of automobiles, for the purchase of appliances, and articles of that nature.

Q. Does General Motors Acceptance Corporation have an office in Lexington?

A. Yes.

Q. Do you try to compete with it for business from General Motors dealers?

A. Yes.

Well, I say we try to. We make the same types of loans for the purchase of automobiles that GMAC does.

Q. How successful are you in obtaining business from the General Motors dealers?

A. Well, we haven't been very successful.

Q. Why do you think that is true?

A. I am not sure I am in a position to answer that.

We have two very good customers that are General Motors dealers. And we have not been able to get the bulk of their sales paper.

[52] Q. Mr. Clarke, do or do not savings and loan associations maintain accounts with commercial banks?

A. Yes, indeed.

Q. Do insurance companies?

A. Yes, sir.

Q. Do small loan companies?

A. Yes, sir.

Q. Do sales finance companies?

A. Yes, sir.

Q. Mortgage companies?

A. Yes, sir.

Q. Mr. Clarke, in your opinion, what effects will the increased size of the consolidated bank have on the ability of your bank to compete?

A. I am apprehensive about that, the same as I am the trust business. Lexington has changed greatly in the sixteen years I have been here. The majority of the business in Lexington is—or a great deal of it is controlled outside of Lexington. My experience in soliciting accounts of national concerns is that size has a tremendous influence—it is hard to understand it, but it does—on the decisions of treasurers of national corporations as to the bank of their choice in a community where they have a branch or an operation of some kind. There are certain local people who want to do business with the biggest institution in town. They must think it [53] gives them some prestige or something.

But it is, nevertheless, a hard, cold fact. And the greater the disparity between two banks, the more difficult the competition, in my opinion, becomes.

Q. Mr. Clarke, in the field of advertising, what effect, if any, do you think that the consolidation of First Security will have on the ability of your bank to compete?

A. There again we get back to what I will call excessive size. Banks, I think, allocate advertising dollars based upon their deposits and the size of their deposits. And with this institution having three times the amount of deposits that we have, I would assume that their advertising appropriation would normally amount to about three times ours. That is a right compelling influence on obtaining business, I would think.

Q. Mr. Clarke, what effect do you think will occur if by virtue of the consolidation the First Security is better able to operate more efficiently and acquire better equipment?

A. Well, I think that is an advantage. There has been much talk recently about automation in banks. Some friends of mine told me that one of the principal reasons they wanted to merge a two hundred million dollar bank with a one hundred million dollar bank was because it would afford automation.

[54] Mr. LISLE. I object to that.

The COURT. Sustained. I don't think that is competent.

The WITNESS. Obviously if you can afford automation, it gives you a competitive advantage.

By Mr. WILLIAMS:

Q. In your opinion, what would be the effect of the combination of the officers and directors of the two institutions on the ability of your bank to compete?

A. Well, again there you get back to a matter of influence in the community.

Q. Would you explain what you mean?

A. Well, a lot of business in any field, banking or anything else, is influenced by the influence of the people connected with the business. The gentlemen who are the directors of this institution are very influential men in this community separately, and combined they are practically twice as influential as they were separately.

Q. Mr. Clarke, what effects do you think the consolidation will have if as a result thereof the combined institution is better able to hire more trained management personnel and specialized people?

A. Well, obviously the larger your business, the more funds you have available to pay help with and to employ help.

[55] Q. Is that an advantage to a bank to have a lot of trained specialized people?

A. Yes, it is a very definite advantage.

Q. Mr. Clarke, what effect, if any, on competition as a result of the formation of First Security would there be if it would be better able to attract deposits from large corporations as against what First National and Security were able to do prior to the merger?

A. Well, as I said a minute ago, I think the treasurers of national corporations are unduly influenced by size. It was difficult enough with the largest bank in town having 40 percent of deposits. I think it will be that much more difficult with the largest bank having between 52 and 53 percent of the deposits. I think it is sort of a progressive influence.

Q. Mr. Clarke, what effect on competition, if any, in your opinion, will result if First Security is better able to attract more correspondent bank accounts than First National and Security were able to attract prior to the merger?

A. Well, it is difficult for me to follow that, because Lexington is not a Federal Reserve city. About the only service that a Lexington bank can offer a small bank is the collection of checks drawn on our locality.

Now, from that standpoint, I think it will be of some [56] benefit. But I don't think it will have too much influence upon attracting new money to Lexington.

Q. Mr. Clarke, would it be an advantage to the combined institution if it is able to increase correspondent banks and improve the deposit structure received from those banks?

A. Well, obviously anything that attracts deposits benefits the bank.

[57] As I said a minute ago, I don't believe that that is going to have too much influence on that type of account. If it does, it is of benefit to the bank certainly.

Does that answer your question?

Q. What effect on competition, Mr. Clarke, as a result of the consolidation of First-Security, has been caused by the increase in its lending limits?

A. There again it is hard for me to follow this because the two separate banks have a substantially larger lending limit than the two banks consolidated have. That is merely a matter of simple arithmetic.

The First and the Security could lend on an unsecured basis $440,000 and $250,000, which is $690,000, prior to the merger; and now combined, they can only lend $500,000.

So there has been a reduction of $190,000 that the combined bank can lend on an unsecured basis as compared with the separate banks.

Q. Mr. Clarke, my question was directed to what advantage, if any, the increase in the lending limits of the combined institution—even though it may be less than the merging institutions added together—would have on competition.

A. I personally do not think that Lexington needs a bank with a great deal larger lending limit than the banks had prior to this merger. In explanation of that statement——

[58] Mr. Odear. If your Honor please, I don't believe that is responsive.

The Court. Finish your answer.

The Witness. What I would like to say, Judge, is when our bank became a national bank in 1958, we had a lending limit of $400,000 as a state bank. We deliberately accepted a lending limit as a national bank of $200,000 because we felt that was adequate.

The Court. Gentlemen, it is 12:00 o'clock. We will be in recess until 1:30.

Have you further questions which you want to address to Mr. Clarke?

Mr. Williams. A few more, your Honor.

(Thereupon, at 12:00 noon, the Court recessed, to reconvene at 1:30 p.m. of the same day.)

[59] *Afternoon Session (1:30 p.m.)*

The COURT. You may proceed, Mr. Williams.

Mr. WILLIAMS. Thank you, your Honor.

Whereupon, Ernest S. Clarke, Jr., the witness on the stand at the taking of the noon recess, resumed the stand, was further examined and testified as follows:

Direct examination (resumed) by Mr. WILLIAMS:

Q. Mr. Clarke, what effect on competition, if any, will result in your opinion if First-Security is able to improve its trust department operations and attract larger estates than the consolidated banks were able to do operating separately?

A. It is hard to get more than 94 percent. They have got 6 percent they can work on, and I think they will increase it.

Q. Are they in a better position to increase it as a result of the combination?

A. Oh, yes, very definitely. They can hire better qualified people and devote more money to advertising the department. I don't think there is any question about it.

[60] Q. Mr. Clarke, your bank, is it not, is a result of the merger of two banks?

A. That's right, sir.

Q. What was the reason for that merger?

A. Our principal reason for the merger was to be able to better compete with the First National.

Q. What effect, if any, in your opinion will the consolidation have upon other possible mergers among banks in Lexington?

A. It would certainly make sense to me that they would seriously consider them.

Q. Why do you think that?

A. In order to get in a better position to compete with the much, much larger institution.

Q. Mr. Clarke, if a bank desires to increase its lending limit, is there a means of doing so other than by merger?

A. Oh, yes, through the sale of stocks—which most banks have done.

Q. Can you convert undivided profits into capital and increase——

A. Yes, sir, that is purely a transfer from undivided profits into surplus, which increases the lending limit.

Q. Mr. Clarke, in your opinion is there any necessity [61] for the consolidation of The First National and Security Trust?

A. Not in my opinion, sir.

Q. Mr. Clarke, in your opinion does First-Security, as a result of the consolidation, have the power to set rates on loans made by commercial banks in Lexington if it chooses to do so?

The COURT. I didn't understand the question. Will you repeat it, Mr. Reporter?

(Pending question read.)

A. To a large extent, sir. They have approximately 54 percent of the total loans in banks in Lexington, and I think they would have the power to raid any other institution in Lexington if they so decided to do.

Mr. ODEAR. To do what?

The WITNESS. To raid them.

Mr. ODEAR. To raid them?

The WITNESS. Yes—by concentrating on the customers of that other institution and offering them money way below the going rate.

By Mr. WILLIAMS:

Q. Mr. Clarke, would your bank be able to exercise any influence on that?

A. Oh, no; no, we have only 15 percent of the bank [62] loans in Lexington. We couldn't have any material influence on it one way or the other.

Mr. WILLIAMS. That is all the questions I have.

The COURT. You may cross-examine.

Cross-examination by Mr. ODEAR:

Q. Mr. Clarke, you have taken some active part in opposing the merger of these two banks, first of all, in trying to prevent the merger from taking place, have you not?

A. I went to Washington and talked to the various affected agencies. So did the representatives of the other banks in town.

Q. I am asking you about your activities.

A. I did.

Q. Who did you go to see while you were in Washington?

A. I went to see the Comptroller, the Federal Reserve Board, the Federal Deposit Insurance Company, and the Department of Justice.

Q. Was your purpose in going to see those agencies to protest against and to try to prevent, if you could, this proposed merger?

A. Primarily to present the facts as they existed in Lexington.

Q. But you weren't interested in what the result was; [63] you just wanted to be sure they had the facts?

A. I wanted to be sure they had all the facts. I think I have a letter to the Comptroller that will bear that out.

Q. You were interested in the result, though.

A. Very much so.

Q. That is what I am getting at. You were opposed to the merger and were taking active steps to prevent it, were you not?

A. And still am.

Q. And still are. After the merger took place there was an amended complaint filed in this action to have the merger set aside. You have continued those efforts, have you not? For example, you have conferred with the Government's attorneys and assisted them in any way you could in helping to prepare the case against the merged bank, have you not?

A. I don't believe that.

Q. You haven't conferred with the Government's attorneys——

A. I answered any questions they asked me.

Q. You made yourself available to them for that purpose and conferred with them, didn't you?

A. My phone is in the telephone book; everybody knows where I do business.

[64] The Court. Well, I think a candid answer would be better.

The Witness. I am trying to tell him, Judge, that I took no active part in it.

The Court. Proceed.

By Mr. Odear:

Q. What else did you do in addition to going to Washington and conferring with the various agencies and conferring with counsel for the Government interested in the case, Mr. Clarke, in trying to see this merger did not take place?

A. Nothing.

Q. Those particular acts which you did do, which you have described—by the way, how long did you stay in Washington for that purpose?

A. We got there on the C & O, I think, at about eight o'clock in the morning and we left there that night, I believe on an Eastern Air Lines plane, and came back to Lexington.

Q. During the course of the day you saw the various agencies of the Federal Government you have talked about?

A. That's right.

Q. I would like to ask you, Mr. Clarke, if those efforts that you have described and which you have made were made by you as an individual or as a representative of your bank, of which you are president?

[65] A. They were made as president of our bank.

Q. And not as an individual.

A. Right.

Q. It is a fact, isn't it, that the question of whether or not your bank would oppose this merger came up before your board of directors?

A. We saw no reason whatsoever for our board of directors to take any action at all in connection with this.

Q. But, as a matter of fact, it did come up and there was some considerable discussion——

A. There is nothing in the minutes of our board that even mentions it.

Q. I didn't ask you what the minutes showed. I asked you if it wasn't a fact that the matter came up before your board of directors and if there wasn't a discussion about it.

A. I would say it was discussed at probably every meeting of the board we had.

Q. Tell the Court who Mr. Arch Mainous is.

A. He is the chairman of the board of our bank.

Q. Before the consolidation of the Union Bank, of which you were president, and the Citizens Bank, I believe he was president of the Citizens Bank, was he not?

A. That is correct.

Q. And upon merger he became chairman of the board of [66] the merged bank?

A. That is correct.

Q. And you became president?

A. That is correct.

Q. Do you recall at one of the meetings of your board of directors that Mr. Mainous reported to the board that he had said to one of the officers of the First National Bank that he did not intend to oppose the merger and that he hoped the board would go along with him on that?

A. He did not say that.

Q. He made no statement either like that or similar to that in substance?

A. No, sir.

Q. Do you recall any of the members of your board of directors when this matter came up for discussion saying that they did not wish the bank to take any action opposing the merger?

A. We never considered it a matter which our board should take action on.

Q. Do you recall any of the members of your board saying that they did not think a bank should take any action with reference to opposing the merger?

A. The only thing I recall concerning that is that they did not think that the board should take any action.

[67] Q. You don't recall them saying that they did not think the bank should——

A. That was never said.

Q. Do you recall some of the members of your board of directors saying that they thought it would benefit your bank for this merger to take place?

A. There have been all kinds of things said concerning this.

Q. Do you recall that being said?

A. Not directly, no, sir.

Q. In substance?

A. Not directly.

Q. If not directly, do you remember it being said indirectly?

A. It may have been mentioned; I don't recall.

Q. But it is a fact that your board took no action requesting you to oppose the merger or to take any steps on its behalf in opposing it?

A. I didn't ask them.

Q. I didn't ask you what you asked them; I said that is a fact they did not.

A. They did not take any action; they were never asked to take any action.

Q. Mr. Clarke, back before the merger of your bank with the Citizens Bank, was a merger between the Union Bank [68] of which you were president at that time and The First National Bank ever discussed?

A. Yes, sir.

Q. To what extent did those discussions of a possible merger between Union Bank and The First National Bank occur?

A. May I answer that in my own way?

The COURT. Just answer the question.

The WITNESS. It isn't Yes or No, Judge. It is something that takes a little more explanation.

The COURT. Answer it, and then make your explanation.

The WITNESS. There were negotiations.

The COURT. Now if you want to make an answer——

By Mr. COBAR:

Q. Do you want to explain it?

A. Yes, I would like to.

The COURT. In the first place, when was that merger accomplished?

The WITNESS. Wait a minute; they are talking about The First National Bank and the Union Bank and Trust Company, which was not accomplished.

The COURT. Which was what?

The WITNESS. Was not accomplished. It was merely discussed.

The COURT. All right.

[69] The WITNESS. Mr. Guy Huguelet, whom I knew very casually only, called me at my office and asked me if I would

mind coming to his office; he had a matter he wanted to discuss with me. He told me that he had been appointed the chairman of a committee of the board of directors of The First National Bank, and that committee was charged with two responsibilities: One, to have an audit performed of the bank; and the other one was as to the management succession of that bank. The first was simple, and the second one was much more involved.

I recommended auditors to him that I thought were fairly capable of performing the audit, and they subsequently did. I recommended two management consultant firms that I thought were thoroughly capable of exploring the situation; and, as I understand it, one of those was employed.

Then he said to me: "Would you be interested in a merger between The First National Bank and the Union Bank and Trust Company?" I told him I would be glad to listen, and the only conditions under which I would be interested was if it was eminently fair to the stockholders of the Union Bank and to me, as president of Union Bank.

He appeared to accept that, and then there were negotiations of a fashion that went on, I will say, for six months before the matter was finally dropped.

[70] By Mr. Odear:

Q. You were sufficiently interested in looking forward to that possible merger to continue those discussions for a period of some six months, were you?

A. On the conditions I have said, yes, sir.

Q. When was this proposed merger under consideration?

A. I think that was 1952.

Q. Approximately ten years ago.

A. About that.

Q. Do you recall what percentage of the total assets of Lexington banks was then held by First National and by your bank?

A. I think The First National had about 40 percent, and I think we had about 8.

Q. So the resulting bank would have had about 48 percent of the total assets of the Lexington banks if the merger had taken place.

A. Something like that.

Q. That fact did not deter you from proceeding with the consideration of the merger, of course?

A. Of course no.

Q. When you were looking into the merger of the bank which would result from the bank with 48 percent of the assets of the local banks, did you make any study to determine whether or not that would give you a competitive advantage [71] over other banks or a monopoly of the local banking situation?

A. I told our executive committee that I thought this would be advantageous to the stockholders of the Union Bank; I thought it would be advantageous to me; but I did not think it was in the best interests of Lexington.

The COURT. I can't hear a word you say. Would you please repeat it, Mr. Reporter?

(Reporter read the last answer.)

By Mr. ODEAR:

Q. That fact, however, did not deter you from asking them to give you a definite date when you would become the chief executive officer of the proposed combined bank, did it, Mr. Clarke?

A. No, sir, that was the first statement I made to Mr. Huguelet.

Q. In spite of that fact, that you considered it might be detrimental to the City of Lexington, you were still interested provided they would meet the other qualifications, the principal of which was when you were to become the chief executive officer of the combined bank?

A. I won't say the principal; I will say the stockholders of the Union Bank was the principal one.

Q. In your deposition in answer to that question, didn't you make this statement:

> [72] What were the proposals that you made directly to Mr. Courtney or Mr. Nichols or through Mr. Huguelet for a merger or consolidation of the Union Bank and The First National Bank and Trust Company?

A. They were general. I don't know that they ever got down to anything specific. I was principally interested in where I was going to stand.

Did you make that statement?

A. I was principally interested in that—and the stockholders of the bank.

The COURT. Answer so I can hear you.

The WITNESS. I was principally interested in that and how the stockholders of the bank were going to fare. I said, "It has got to be fair to both, or there is no possibility of a deal."

Q. Wasn't this question then asked you:

Q. What in general was your suggestion with respect to how you were to be taken care of?

A. I wanted to know what time I would become chief executive officer of the bank?

Did you make that answer?

A. Sure, I did. I was the Vice President of a $100 million [73] bank when I came to Lexington. Do you think I wanted to become the Vice President of a $40 million bank——

The COURT. Don't argue about the questions.

The WITNESS. In Lexington?

By Mr. ODEAR:

Q. As a matter of fact, the reason those negotiations fell through and the merger did not take place is because they would not give you a definite date when you were to become the chief executive officer of the merged bank?

A. I don't know a thing about that, sir.

Q. You know they didn't give you such a date, don't you?

A. I know it didn't come to pass.

Q. You know they would not give you a definite date when you would become the chief executive officer?

A. I don't know why, but they dropped it.

Q. They told you they would not do that and you dropped it.

A. They did not tell me that at all, sir.

Q. Isn't it a fact that the real reason you opposed this merger of The First National and the Security Trust Company is the fact that, since you were unable to bring about a merger of

The First National with your banks in which you could become the chief executive officer, that you therefore don't want to see this one go?

[74] A. I resent the implications in that question, Mr. Odear.

Q. Whether you resent it or not, I would like for you to answer it.

A. There is not a word of truth in it. Are you questioning my integrity?

Q. I am just asking you the questions, Mr. Clarke.

The WITNESS. Judge, I think I should be permitted to——

The COURT. Yes.

The WITNESS. I think they are questioning my integrity.

The COURT. Maybe they are, but I don't think they are——

The WITNESS. That had absolutely nothing to do with my opposition to this merger.

The COURT. All right, make your statement. That is all I can say.

By Mr. ODEAR:

Q. Mr. Clarke, you said this morning that banks were the subject of numerous regulations, did you not?

A. Yes, sir.

Q. And those regulations are in the form of both Federal and State laws and regulations of the various authorities having authority over banking operations, are [75] they not?

A. Yes, sir.

Q. I understood you to say that those regulations did not affect banks in any way as to competition between each other. Is that true?

A. I don't view them as competitive regulations.

Q. I believe you used the illustration that, as far as competition was concerned and the effect of regulations, you were just as free as grocery stores to compete with each other.

A. In prices.

Q. There are fields, however, in which those regulations do limit the competition between banks, are there not?

A. Well, we have usury laws in the statutes.

Q. For example, isn't one of the very chief fields of competition between commercial banks the obtaining of demand deposits?

A. Sure.

The Court. Talk up so I can hear you.

The Witness. Yes, they are.

The Court. Suppose you turn around and face this way.

The Witness. I am trying to look at him to understand the questions.

[76] The Court. Speak loud enough so we can hear you.

By Mr. Odear:

Q. There is in effect at the present time a regulation which provides that banks cannot offer interest on demand deposits, is there not?

A. That's true, that has been the law since 1933, I think.

Q. Prior to that time, banks did, under certain regulations, give interest on demand deposits, did they not?

A. Some of the larger banks did, yes.

Q. By offering interest on demand deposits, they were able to compete with each other in obtaining demand deposits?

A. That is correct.

Q. Now that the regulation has done away with that, banks cannot compete with each other in obtaining demand deposits through the medium of offering interest.

A. That is correct.

Q. So that regulation defeats competition along that line.

A. Yes, sir.

Q. Are you in competition in attempting to obtain time deposits or savings deposits?

A. Oh, yes.

Q. Is there any regulation which affects your ability to compete with each other in that regard?

[77] A. Yes, sir.

Q. Tell the Court what that is.

A. There is a limit set upon the amount you can pay as interest on time deposits. It was recently increased from 3 to 4 percent.

Q. What do the banks, universally or all of them in Lexington, offer as interest on time deposits?

A. The maximum.

Q. You say it was recently raised, I believe?

A. Effective the first of this year.

Q. Did the banks in Lexington all immediately at the same time raise to the new limit, or did one bank do that first?

A. As I recall, there was an ad in the newspaper by one bank announcing it was going to first.

Q. Was that the largest bank or the smallest bank which did that?

A. It was The Central Bank.

Q. Which bank is that—the smallest bank in Lexington asset-wise?

A. No, I don't think it is the smallest one, is it?

Q. Yes, sir.

A. At the end of the year? I thought The Second National was the smallest one.

Q. It was a short time ago the smallest, and has just [78] recently——

A. We are talking about January 1, 1962, are we not?

Q. It was next to the smallest.

A. All right.

Q. When The Central Bank announced publicly that it was going to raise to the maximum interest rate on time deposits or savings accounts, what did the other banks do, if anything?

A. By the 1st of January they had all announced that they would go to 4 percent.

Q. At that time was The First-Security National Bank operating as a merged bank?

A. Yes, sir.

Q. You said that the merged bank, by reason of its size, would be able to impose rates for loans and various things on the smaller banks, I believe, in your direct testimony, did you not?

A. Yes, sir.

Q. In that case which of the banks enforced on the others the rate of interest to be paid to time depositors?

A. As a matter of fact, in that connection we were trying to hold to a lower rate from the maximum, and The First Security advised us that they were going to the maximum. So our efforts to hold to a lower rate collapsed immediately.

Q. Didn't they tell you that the reason they were [79] going to the maximum was because The Central Bank was going?

A. That's correct; but their decision was very influential on us in that respect.

Q. In turn, The First National's decision was influenced by the next to the smallest bank.

A. Yes, I assume it was.

Q. There are certain regulations, both state and Federal regulations, with reference to banks maintaining a liquid condition of their assets, are there not, Mr. Clarke?

A. Yes, sir. That again gets into what I was talking about this morning. That is for the safety of the depositors. That is not to regulate competition.

Q. The primary purpose of that is to make it safe for the depositors?

A. That's right, yes. I think of that as different from the regulation of a utility in charging rates entirely.

Q. However, there are rules and regulations which require certain specified conditions in order for a bank to be liquid and to meet those requirements. Do they not put a limit on the amount of money which a bank has available for lending purposes?

A. The reserves themselves control that.

Q. Does not that affect the amount of interest which banks can and do demand on their loans?

[80] A. The only thing I am trying to say in that respect——

The Court. Just answer the question and then we will get through.

The Witness. Will you read the question?

(Reporter read the last question.)

The Witness. I didn't realize there was any connection between the two.

By Mr. Odear:

Q. You don't feel that the amount of money available in a bank for lending purposes has any effect on the amount of interest which they charge?

A. No more than the ordinary forces of supply and demand.

Q. That is what I am getting at. That is one of the direct forces of supply and demand, isn't it—the fact that a large portion of your funds——

A. Obviously if a bank is loaned up to the hilt, it is going to charge a higher rate for any new loan it makes. If it isn't, it is going to be and it can go to any rate it cares to.

Q. On the low side.

A. On the low side; and on the high side, as far as corporations are concerned.

Q. But as far as individuals are concerned——

[81] A. It is limited by the usury law of the State of Kentucky.

Q. Is there a limit on the percentage of money that a bank can lend for the purchase of securities?

A. Oh, yes, that is governed by the Federal Reserve Board—Regulation U.

Q. I believe that is 30 percent, is it not?

A. Thirty percent at the present time, for the purpose of purchasing other securities.

Q. That is what I mean. Does that affect the rate of interest which banks can charge for those purposes in your opinion?

A. I don't see the direct connection between that and the rate of interest you charge for lending money in compliance with Regulation U.

Q. You don't think that affects the law of supply and demand either?

A. It limits the amount you can lend for that purpose to 30 percent of the market value, and that is changeable at any time by the Federal Reserve Board.

Q. If a bank could lend more for that purpose than another, could it then be in a better competing position?

A. Oh, sure; but you are talking about the rate of interest it charges.

[82] Q. I am now talking about competition between the banks on the field of various regulations and how they may affect competition between banks. Doesn't that affect competition between banks, if they are all limited to that 30 percent?

A. Definitely.

Q. National banks also have a limit on the amount of money they can lend unsecured to a single customer?

A. Yes, sir, ten percent of capital and surplus.

Q. Ten percent of capital and surplus?

A. Yes.

Q. You are also restricted, are you not, by your regulations as to your investments?

A. They have to comply with broad quality—again protecting the depositors of the bank.

Q. In other words, there are only the bonds of certain corporations that you can buy and others you cannot.

A. There are four classifications—and that is what governs—by the rating services.

Q. You are also subject to regulations as to the acquisition of real estate, are you not?

A. Yes, sir.

Q. And can only acquire it for your own business purposes when it is taken in in order to collect a loan and can be [83] held for a limited length of time?

A. That is correct.

Q. Mr. Clarke, you said that you are in direct competition with other banks as to the acquisition of demand deposits. I believe that is one of the principal fields in which you are in competition, is it not?

A. That's right.

Q. Since you cannot offer inducements to depositors to make deposits in order to get interest, in what way do you compete with your competitors for demand deposits?

A. In the matter of service.

Q. Isn't the matter of service to those depositors the chief method of competition for demand deposits?

A. That is correct.

Q. In what way will the size of the merged bank enable it to increase its service to the public so as to obtain better and more demand deposits?

A. I think in many ways.

Q. Tell us how.

A. It will have more money to spend; it will have more money to devote to the promotion of the business and to the hiring of extra-curricular services—if I may call them that—entertainment.

Q. Do you think that the combined bank will have [84] more funds to spend for that purpose than the two separate banks would have operating separately?

A. I assume that was one of the reasons for the merger.

Q. Do you think that they will?

A. I think so.

Q. But the competition between those two institutions will of course cease, will it not?

A. Yes, sir.

Q. So, as far as your bank is concerned, you will have one less competitor for those demand deposits than you would have had before.

A. Yes; but I would think they would have more money to spend competing with us.

Q. It is of the very nature of demand deposits that they can be withdrawn at any time on demand. Is that right?

A. Right.

Q. That is true, whether it is a large bank or a small bank.

A. Right.

Q. Equally true.

A. Right.

Q. So that the merger would not in any wise affect that [85] situation.

A. No.

Q. Since you all offer the same rate of interest for time deposits or savings accounts, and since that is fixed——

A. We don't have to.

Q. And since the maximum is fixed by law, there is really no competition between you as to the interest rate on time deposits.

A. Not at the moment; there can be.

Q. In what way, then, do you compete for time deposits?

A. A matter of service again. That is about the only way you can.

Q. There again it is a question of service.

A. And convenience—if that is a part of service.

Q. With reference to competition for small loans, do you compete with other banks for small loans?

A. We try to, sir, to the best of our ability.

Q. There again you compete by offering service, do you?

A. No. There is a wide range of rates available in that field.

Q. A variance in rates of interest, is there?

A. Yes.

Q. Do you compete with the so-called small loan companies which lend up to $800 at higher rates of interest?

[86] A. I don't think so.

Q. You are trying to serve people who wish to borrow from $800 down in the community, are you not?

A. Yes, but not the type of people who normally borrow from the small loan company. The credit risk is the point I am making.

Q. Are you familiar with any study that has been made of the customers who borrow from the so-called small loan companies as to what percentage of them would be qualified for bank loans?

A. No, sir.

Q. You are not familiar with the study made by the University of Kentucky?

A. No, sir. I would like to add this to my answer. I can't imagine a man paying 36 percent for money when he can get it for 6, and that is the basis for my answer.

Q. There are other factors that enter into it, are there not, such as the advertisements which the small loan companies conduct? They are pretty heavy advertisers?

A. I don't know how much they spend.

Q. You see advertising in your local paper, and you hear it on the radio, don't you?

A. Yes.

Q. You know they are very heavy advertisers—"Come in and [87] no questions asked, and we will let you have money"?

A. Yes, I know.

Q. They are much heavier advertisers for that class of loan than banks, are they not?

A. I would think so.

Q. Would you think that it would be too high a figure to say that 55 percent of persons who borrow from small loan companies would be eligible for bank loans for the same amount?

A. I would be amazed. In fact, I would question any statistics that tended to bear that out.

Q. Let me be sure that I understand you. You say that you do not in your opinion compete with small loan companies?

A. I don't think we do.

Q. You, I believe, testified in Philadelphia in the bank merger case there, did you not, Mr. Clarke?

A. I did.

The COURT. Will you speak so I can hear you.

The WITNESS. I did.

The COURT. If you will face me, I can hear you better.

The WITNESS. It is hard for me to face you both.

[88] By Mr. ODEAR:

Q. In that case you testified on behalf of the Government?

A. That is correct.

Q. I will ask you if these questions were asked you and if you made these answers:

> Q. Mr. Clarke, what other competition do you have in Lexington other than commercial banks?
>
> A. Competitors for funds, I would say the building and loan associations.
>
> Q. Building and Loans? What others?
>
> A. For small loans we have finance companies for certain categories of consumer loans; and when I say finance companies, I am speaking of small loan companies, which in our state are limited to $800 and under.

Did you give that testimony?

A. I said there is some competition. I don't think it is substantial in that field.

Q. In other words, it is not that there is no competition, but there is some——

A. There is some.

Q. But you think it is small?

A. I will grant you there are some loans that they [89] make that we would make.

Q. You did make those answers?

A. If it is in the record, I made them.

Q. Mr. Clarke, getting into the subject of competition with non-banking institutions and individuals, are there other non-banking institutions which compete with your bank and other commercial banks for time deposits in the Lexington area?

A. Not as I consider time deposits, no.

Q. Something of the nature so close to your time deposits that for all practical purposes they serve the same need?

A. If you are referring to building and loan associations, you are a stockholder in a building and loan association; you are not a creditor.

Q. Aren't you familiar with the fact that the savings and loan associations also have savings accounts where you do not become a stockholder, but you deposit money on savings against a passbook?

A. I am not a lawyer, sir, but it is my understanding that those funds are being accumulated against the issuance of stock.

Q. As far as the customer is concerned, he goes in and he gives the institution some money and they give him back a [90] passbook showing he has given them money and it draws a certain specified rate of interest——

A. I thought that was called dividends.

Q. Regardless of what it is called——

A. Isn't it called dividends?

Q. In some instances it is.

A. Can it be called interest legally?

Q. I think it can.

A. I think you are subject to serious questioning there.

Q. It is quoted as such on income tax returns, Mr. Clarke. I think it can.

A. I don't think so.

Q. But, as a matter of fact, it is a return on your investment. You can call it what you wish. It is at a certain specified amount, payable semi-annually, is it not?

A. It is a certain specified amount, yes.

Q. Don't you think a service of that kind actually is in competition with your so-called time deposits or savings deposits?

A. I won't say it is not in competition. It isn't the same thing we offer.

Q. Although it isn't identical, isn't it in competition with it?

A. It gets money, yes.

[91] Q. Isn't it in competition with what you have to offer?

A. I presume so.

Q. Your time deposits are insured up to $10,000 by an instrumentality of the Federal Government, are they not?

A. By the Federal Deposit Insurance Corporation.

Q. Aren't those building and savings funds which are given to them in the manner I described also insured by exactly the same institution?

A. No, sir, they are not.

Q. A different institution but in the same way—I mean, by the same Government.

A. I don't know what the Government has got to do with it.

Q. It is an agency of the Federal Government, isn't it, Mr. Clarke? You are familiar with that?

A. It depends on how you define an agency of the Federal Government. It is a separate corporation and has no relation whatsoever to the Federal Deposit Insurance Corporation.

Q. The Federal Deposit Insurance Corporation is also a separate corporation, but is an instrumentality of the Government.

A. I presume under a broad definition of what is an [92] instrumentality of the Federal Government, yes.

Q. What about in your consumer loan field: Are there nonbanking institutions which compete with your bank in the field of consumer loans?

A. Oh, yes. I think I said that this morning.

Q. Tell us who they are principally and how they operate.

A. Principally the sales finance companies that finance automobiles.

Q. Such as the CIT Corporation, General Motors Acceptance——

A. It depends on what you are talking about. If you are talking about the financing of automobiles, yes, we are in competition with them.

If you are talking about the lending of money on accounts receivable in which these firms do a substantial amount of business, I don't think they are in competition with us.

[93] By Mr. ODEAR:

Q. You are actively seeking the loans for financing the purchase of automobiles, are you not?

A. That is right.

Q. That is a rather lucrative and a rather voluminous field to finance, isn't it?

A. We like it.

Q. You are in direct competition with them in that field, are you not?

A. That is right.

Q. Do you not make loans against accounts receivable?

A. No, sir. Only in very isolated instances. We don't solicit them in any way, shape, or form.

Q. In some instances you have done it?

A. As additional collateral to a loan we feel we should make.

Q. Do you know whether or not other banks in Lexington make such loans?

A. I do not.

Q. Does your bank make real estate loans?

A. Yes, sir.

Q. These real estate loans are also made by insurance companies?

A. We don't make the same types of real estate loans that insurance companies make at all.

[94] Q. But they are both loans secured by real estate, are they not?

A. They are secured by a first mortgage on real estate, if that is your question, yes.

Q. Yes.

And they are different—they are different principally in the length of time for repayment?

A. That is right. And in the amount they will lend.

Q. You mean the percentage of the value of the property?

A. That is right.

Q. Now, building and loan associations also make real estate loans? In fact, that is their principal lending source, is it not?

A. I think they are in competition with insurance companies, but not with banks.

Q. You do make loans on residence property, I assume?

A. Oh, yes.

Q. You occasionally make them to run as long as fifteen years?

A. That is a rare, rare exception.

Q. You do do it, though, don't you?

A. We have done it a few times, yes.

Q. You do make them fairly frequently that run ten to ten and a half years, do you not?

[95] A. Ten years we try to hold to.

Q. Now, there are other institutions which lend money on real estate in Fayette County, are there not? For instance, institutions such as the Female Orphans School, and the College of Bible?

A. Yes, sure.

Q. Various and sundry institutions that have funds to invest?

A. That is right.

Q. So that there are many fields of commercial banking in which there is active competition from non-banking sources in the making of loans?

A. I don't consider that so in the real estate loan field.

Q. But there are many such fields?

A. There are other fields to a limited extent, yes.

The Court. Let me ask you this: aren't there individuals in the community who make it their business to lend their money on real estate or collateral just about like a bank?

The Witness. I am sure there are, your Honor. He said institutions. He asked if there were other institutions.

The Court. I know. But I wanted to find out.

The Witness. I am sure there are. I don't know them. But I am sure there must be.

[96] The COURT. Don't you know?

The WITNESS. No, sir, I don't.

The COURT. Don't they frequently keep deposits in your bank and don't you know they lend from their deposits that are in your bank?

The WITNESS. I don't know them, Judge.

The COURT. All right. Go ahead.

By Mr. ODEAR:

Q. Don't you subscribe to the Lexington Credit Bureau Weekly Report?

A. Yes, sir.

Q. You examine that to familiarize yourself with what is going on in your business?

A. I don't. But our bank does.

Q. You are not familiar with it yourself?

A. No, sir.

Well, I am familiar with it, but I don't examine it every week.

Q. Well, you are familiar with the fact that it sets out the amounts of loans on real estate made by individuals?

A. Our credit department scrutinizes it very carefully.

Q. But you yourself are not familiar with it?

A. No, sir.

Q. You also make various types of loans to individual wage earners, do you not, Mr. Clarke?

[97] Q. Are you in competition in any wise with credit unions for that business?

A. I don't know how substantial that is. I am sure there are some credit unions here. And I am sure they make a lot of loans that we would otherwise make. I don't know the extent of it.

Q. Are you in competition with them for savings accounts?

A. I am sure they are. They get their money from, I presume, their employees who deposit weekly amounts, yes. I would say we are in competition for their fund. Even more so than we are for their loans.

Q. Mr. Clarke, do you know, or have you made any study of what percentage of trust matters which go through the

Probate Courts of Fayette County, Kentucky are handled by individuals?

A. I have seen your exhibits in this case.

Q. If those exhibits are correct, is that competition with individuals for trust accounts active?

They get a substantial portion of the business, don't they?

A. I am sure they do. I never feel like we are in direct competition with the widow of a deceased man or with the man of a deceased woman. And that is who the bulk of these people are. We would like to have the business, yes.

[98] Q. To what extent do you seek trust business in your bank?

A. To every extent that we know how, sir.

Q. Would you tell us how you go about doing that?

A. We have had finance forums for women. We have advertised them extensively in the newspapers. We have just had a finance forum for businessmen. We have mailing lists. We send information to the lawyers and the accountants. We solicit good trust business from any source we can obtain it from.

Q. In your advertisements do you often stress the fact that your institution has some very great advantages over an individual performing those services?

A. Yes, sir.

Q. Why would you do that if you did not feel that there was competition between your bank and individuals?

A. I didn't say we didn't feel there was competition. We would like to have the business. But I don't know how to compete with a man's wife.

Q. You do attempt to compete with individuals?

A. Yes. Yes, that is what I meant to imply.

Q. It is difficult, but you are attempting to do it?

A. Right.

Q. And that difficulty would be just as well experienced by large institutions as by small ones; isn't that true?

[99] A. I am sure that is true. Of course, I do think that a large amount of the individuals who administer trust estates are members of the family, and in most instances I think they are relatively small estates.

Q. But the competition with the widow, as you have expressed it, would be just as great against the trust institution as it would against the two separate banks in this case?

A. Yes.

Q. Are you familiar with the fact that attorneys-at-law perform trust functions for people?

A. I am sure they do.

Q. To a large extent?

A. I don't know to what extent.

Q. You have made no study as to how substantial that is?

A. No, I have not.

Q. To the extent they do so, are they in competition with the Trust Department of your bank?

A. I am sure they are.

Q. And also with the merged bank?

A. I am sure they are.

Q. And that is another phase of competition which would not be affected by the merger?

A. I wouldn't think so.

[100] Q. What personnel do you have? Well, before we get into that, let me ask this: When did your bank first open a separate Trust Department?

A. I think the Citizens Bank and Trust Company opened a separate department in 1948. Union Bank and Trust Company didn't have a separate department.

Q. When you merged with the Citizens Bank, the merged bank continued to operate a separate Trust Department?

A. Right.

The COURT. Was the merger of these banks in 1948?

The WITNESS. 1954.

The COURT. Go ahead.

By Mr. ODEAR:

Q. What personnel do you have in your separate Trust Department?

A. At the present time?

Q. Yes, sir.

A. Well, Mr. Slaton is our Vice President and Trust Officer—Mr. Paul Slaton. And we have Mrs. Goldie and Mrs. Schlegel.

And last Saturday night, Mr. Clark Hessel died very tragically. We haven't had time to replace him. He devoted a great portion of his time to trust real estate. And then until about a year ago when Mr. Redd retired, he devoted his full time to it.

Q. Mr. Redd, I believe, did whatever trust work [101] was done by the Union Bank before the merger?

A. That is correct. Then a number of people in the bank provide some service to the Trust Department, including myself.

Q. Mr. Redd retired a year or so ago, did he not?

A. That is right.

Q. He was not replaced in your Trust Department, was he?

A. Mr. Slaton took his place.

Q. Did Mr. Slaton devote his full time to the Trust Department?

A. Oh, yes.

Q. I beg your pardon. Mr. Hessel is the gentleman I had in mind. Did Mr. Hessel before his recent death devote his full time to the Trust Department?

A. Not full time. But he looked after the rents and things of that sort.

Q. What other general functions did he have in the bank?

A. He looked after our building.

Q. Any other functions?

A. Occasionally he made appraisals on real estate.

Q. When you gave your deposition in this case, Mr. Clarke, you did not mention Mr. Hessel. Was that an over- [102] sight?

A. That was an oversight. He didn't devote full time to it. I thought the question said full time.

Q. The two ladies that you mentioned, are they secretaries in the Department?

A. Bookkeepers and secretaries.

Q. Mr. Clarke, what trust services does the Trust Department of your bank offer?

A. Executorships, administratorships——

The COURT. Talk louder so I can hear you.

The WITNESS. Executorships, administratorships, trusteeships, guardianships, committeeships, agency accounts, and any corporate trust duties we can obtain.

By Mr. ODEAR:

Q. Are these essentially the same functions performed by the Trust Department of the First Security?

A. I would assume so, yes.

Q. Are they the same functions that were performed by the Trust Departments of the First National Bank and the Security Trust Company prior to their merger?

A. I would assume so.

Q. Tell us whether or not your bank performs those various trust services as efficiently and as well as the Trust Department of the First Security?

A. I have no way of answering that.

[103] Q. Do you know?

A. I do not.

Q. Do you have any opinion about it?

A. None whatsoever. We think we do a good job.

Q. Now, I believe you have said that since the merged bank holds a large percentage of the present trust assets held by commercial banks in Lexington that this enables them to monopolize the trust market in Lexington.

Isn't that the substance of your testimony?

A. Ninety-four percent is almost a monopoly, in my opinion.

Q. Now, didn't you say that that would, in your opinion, enable them to monopolize even further?

A. Yes, that is correct.

Q. Now, I would like for you to explain to us how the holding of those assets at the present time—the assets they do hold—tell us how that enables them to garner to themselves the additional business which might arise?

A. That is entirely conjectural. But I would think that it would be very conclusive to a prospective client to say we have got 94 percent of the business in this town; we must be the best.

Q. Haven't you found it to be true that your customers who are your persons who make demand deposits with your bank also come to your Trust Department for trust services?

[104] A. Oh, sure.

Q. I believe you said on direct examination that it fed both ways; that the so-called commercial business of your bank fed to your Trust Department and your Trust Department fed back.

A. I said we think it could.

Q. Do you think it does?

A. I don't think there is any question that it did in the Security Trust case.

Q. Do you think in your case that your Trust Department feeds back to your Commercial portion of your bank?

A. To an awfully small extent. Because we don't have a large Trust Department assets.

Q. If it does at all, it is to a very small extent?

A. That is right.

Q. Do you know of any case where one of your customers who makes his demand deposit with you and also utilizes the other commercial facilities of your bank has gone to The First Security National Bank and Trust Company for his trust services?

A. I think a good many of them have.

Q. Could you name us some?

A. I think D. C. Carpenter was one.

Q. That is right. Now, you knew that Mr. D. C. Carpenter and Mr. Leroy Miles were very close friends and so were [105] their wives, did you not?

A. Yes.

Q. Aside from the Carpenter case, can you think of any other?

A. I believe his name was Jeff Weathers who was a customer of ours that went to the Security Trust Company.

Q. Prior to the merger?

A. Prior to the merger.

Q. I am talking about the merged bank.

A. Wasn't Mr. Warren a customer of ours?

Q. I don't know. I am asking you.

A. I am going from memory. I don't have the records. But I am sure that it has happened many, many times.

Q. When you speak of Mr. Warren, you are speaking about Mr. Carpenter's former partner?

A. Yes.

Q. He died some years ago, did he not?

A. That is correct.

Q. You are not familiar with the fact that his wife settled his estate?

A. No, I am not. I thought The First National had something to do with it. Don't they?

Maybe, I am mistaken.

Q. Can you think of any others?

[106] A. Not offhand.

Q. Now, Mr. Clarke, in your direct testimony you made reference to the fact that the merged bank through its Trust Department holds the stock of the Lexington Herald-Leader. Do you recall so testifying?

A. I said that that was my understanding of it from Mr. Stoll's will.

Q. Prior to the merger, that same stock was all held by the Security Trust Company, was it not?

A. That is right.

Q. I believe you stated that in your opinion there were some competitive advantages which accrued to a bank by reason of the fact that its Trust Department owned or controlled or held in its Trust Department all of the stock of the only newspaper operating in the city?

A. I believe I said there could be.

Q. That is what I said, there could be.

A. Yes.

Q. Whatever competitive advantages there were were enjoyed by your competitor, the Security Trust Company, prior to the merger, were they not?

A. That is right.

Q. So that there are no more competitive advantages since the merger by reason of that fact than there were [107] before?

A. Other than the fact that they pulled another competitor under the umbrella.

Q. But as far as the competitive advantage by reason of the ownership or control of stock, it is just the same as it previously was?

A. Yes.

Q. Mr. Clarke, in making large loans, there are really two principal factors involved in a bank's ability to make such loans, are there not, one of them being the lending limits, which we have already discussed, and the other being the availability of funds in the bank for the purpose of making such loans? Isn't that also a very important item?

A. Yes, sir.

Q. That depends to a large extent on the deposit structure of the lending bank at the time of the application for the loan, does it not?

A. Correct.

Q. Now, in the case of the Security Trust Company and The First National Bank and Trust Company, before the merger, what was the lending limit of the First National Bank?

A. $250,000, as I recall it.

Q. And what was the lending limit of The Security Trust Company?

[108] A. $440,000 as I recall it.

Q. Of course, you are talking about unsecured loans?

A. Yes.

Q. Now, with reference, however, to the deposit structure of the two banks, which of the two banks was more able by reason of the size of its deposits to make the large loans in question?

A. I would think The First National.

Q. As a matter of fact, the deposit structure of The Security Trust Company at that time was relatively small, was it not?

A. That is correct.

Q. Roughly speaking, prior to the merger, about $17 million in deposits at The Security Trust Company and about $60 million on deposit at the First National Bank? Is that approximately correct?

A. That sounds reasonable, yes.

Q. When a bank cannot make a large loan because of the limitation of its lending limits or because of the limitation of

the availability of its funds for that purpose, there is a method resorted to known as a—I will let you describe it for us—where you go to another bank?

A. Participation.

Q. Participating loan?

[109] A. Yes.

Q. That is done frequently by banks, is it not?

The COURT. Now, let me understand what that is.

Mr. ODEAR. A participating loan.

By Mr. ODEAR:

Q. Explain to the Court what we mean by a participating loan?

A. Well, Judge, if we have a customer and we think the loan is good and he desires to borrow more money than our legal limit will permit, we will go to one of our city correspondents and ask them to participate for the excess over our legal lending limit.

The COURT. I see.

The WITNESS. And that is done not too frequently, but occasionally, because there are not too many people in Lexington who would qualify.

The COURT. All right.

By Mr. ODEAR:

Q. The merger, of course, has not affected your ability to go to your correspondent and arrange for a participating loan, has it, Mr. Clarke?

A. Not yet.

Q. Do you expect it to? You don't expect it to, do you?

[110] A. No.

Q. It is very infrequent, however, isn't it, Mr. Clarke, that a bank in one particular city will go to its competitor in that city and arrange for a participating loan with its competitor?

A. It may be. But it certainly isn't in Lexington.

Q. I mean as far as you know, in your experience, it is rarely done, isn't it?

A. I have never seen it done in Lexington.

Q. It is so rare that you have never seen it done?

A. I have never seen it done in Lexington.

Q. There are some obvious reasons for that, the first being that the first bank might lose its customers to the second bank?

A. I would think that would be a perfectly legitimate and adequate reason.

Q. So, going back to your testimony of this morning that the combined lending ability of The First National Bank and The Security Trust Company, prior to the merger was more than of the combined bank, that doesn't work out very well in practice because neither of those banks in practice would go to the other and seek out a participating loan if someone wanted a loan beyond their lending limit, would it?

A. I can't speak for them.

Q. Well, you have just never seen anything like that [111] done, have you?

A. I can speak for our bank only in that regard.

Q. The same reasons which would keep you from doing it would also be in existence as far as these two banks would be concerned, wouldn't they?

A. Possibly.

Q. Based on the two principal factors for making those large loans which we have just discussed, namely, the lending limit itself and the availability of funds in the lending bank, would you say that the merged bank would be in a better position to meet large loans in Fayette County now than either of the banks were before the merger?

A. It can lend $60,000 more than the Security Trust Company could. But the two separately could lend $190,000 more than the merged bank.

Q. That would require separate applications for loans unless a participating loan could be arranged, wouldn't it?

A. Yes.

Q. Now, I believe you testified that during the history of your bank that you changed from a state bank with larger lending limits to a national bank with a relatively smaller lending limits?

A. Just half.

Q. Sir?

[112] A. Just half.

Q. Just half?

A. Yes.

Q. When did that take place?

A. September 1, 1958.

Q. And prior to that change, what were your lending limits?

A. $400,000.

Q. Unsecured?

A. Yes.

Q. And after the change?

A. $200,000.

Q. How much was the total of your deposits at that time, Mr. Clarke, if you recall? Or approximately?

A. I would be guessing. But I would guess in the neighborhood of $24 million or $25 million.

Q. Would that have affected the desirability to your bank of loans up to the excess as a state bank?

That is, up to the legal limit as a state bank, the amount of money you had on deposit.

In other words, if you have large amounts of money on deposit, then loans up to your legal limit are more attractive to you than if you have smaller amounts on deposit, are they not?

[113] A. Sure. But we didn't think that our needs were such that that made any difference in the operation of our bank.

Q. Exactly.

Now, you say that the principal way in which banks compete with each other in the fields where it is most important that they do compete is in the matter of service; is that correct?

A. That is right.

Q. In your opinion, is your bank able to give as good service as the merged bank in Lexington is now?

A. We try to.

Q. Well, do you feel that you do?

A. We think we do. I am not sure we have convinced the public of that.

Q. As a matter of fact, since the merger of the First National and The Security Trust Company, have you been successful in competing with them for business in Lexington?

A. I think only to the extent that we were prior to the merger. I think the restraining order which they have been operating under has confused the issue in the minds of the public. I don't think that they know whether it is a merged bank or whether it isn't. We had a substantial increase in deposits last year. As far as I have been able to tell, we did not get those deposits from The First Security.

Q. Well, as far as the public is concerned, whether [114] they know it is a merged bank or not is not too important, because the thing that enables one bank to compete against another is service, isn't it? Isn't that what you said?

A. We think we do a pretty good job.

Q. And the results of your competitive efforts I believe you expressed in a recent advertisement in the Lexington Herald-Leader.

A. I think that goes back to 1954, doesn't it?

Q. Well, I will show it to you here.

This is from the Lexington Herald of Friday, January 5, 1962.

Mr. Odear. Would counsel care to look at it first?

The Witness. May I see it?

Mr. Odear. Yes. But I can't show it to both of you at the same time.

(The newspaper article was shown to counsel for the Government.)

By Mr. Odear:

Q. I will ask you to look at that and I will ask you if your bank caused that advertisement to be run in the Lexington Herald?

A. We did, sir.

Q. How much increase does that show for the period of 1954 through 1961?

[115] A. Approximately $10 million.

Q. Approximately what portion of that increase occurred in the year 1961?

A. I would guess about half of it.

Q. Approximately 50 percent of it, or about $5 million?

A. That is correct.

Q. And for all except the first couple of months of that time you were competing against the merged bank, were you not?

A. Yes, sir. We think we did a pretty good job last year.

The COURT. Are you putting that in evidence?

Mr. ODEAR. Yes, sir.

May that be marked?

The CLERK. Exhibit Number 1 for the Defendant.

(The above mentioned newspaper article was filed with the Clerk and marked Defendant's Exhibit Number 1.)

By Mr. ODEAR:

Q. I believe one of the matters which you mentioned on your direct testimony was the influence of the members of your respective Boards of Directors and your officers and the efficiency of your personnel. You mentioned all of those things, I believe, didn't you, Mr. Clarke?

[116] A. Yes, sir.

Q. Could you tell us who you have on your Board of Directors in your bank?

A. Can I just submit the list?

Q. Would you read them into the record?

A. O. A. Bakhaus, J. W. Bratcher, D. J. Burke, Ernest S. Clarke, Sterling D. Coke, Leslie Combs II, George B. Dunn, James A. Fraser, J. Howard King, Frank L. McCarthy, A. G. Mainous, Charles C. Patrick, Jr., Zellner Peal, Harold Redd, Sam H. Roberts, H. C. Robinson, Sam P. Strother, Clifton L. Thompson, Jr., and William L. Wallace.

Q. Very briefly could you tell us something about who each one of those individuals is in this community?

A. You mean the whole gamut.

Q. Yes. Take each one of them.

A. Q. A. Bakhaus is president of the Winmar Oil Company. He is interested in the Springs Motel, United Service, and Robb Packing Company, as far as I know.

Q. He is also president of the Board of Commerce?

A. Just elected president of the Chamber of Commerce, yes.

Mr. Bratcher is Vice President and Cashier of the bank. He has no outside activities that I know of.

Mr. Burke is in the real estate business.

[117] I have no outside activities.

Mr. Coke is Chairman of the Board of the Van Deren Hardware Company.

Mr. Leslie Combs is a farmer and horse breeder.

Q. Mr. Combs is also president of the Kentucky Insurance Company?

A. That is right.

Q. He is in various business enterprises? He is one of the most outstanding thoroughbred horsemen in the world?

A. I would think so, yes.

Q. All right.

A. Mr. Dunn is in the Will Dunn Drug Company.

Q. Mr. Dunn is also owner of a parking lot, isn't he?

A. Yes, sir.

Q. And he is in various other business?

A. Real estate principally, yes.

With respect to Mr. Fraser, I think the Wesson Corporation is now a division of the Fansteel Metallurgical Company out of Chicago.

I don't think he has any outside interests other than that; I mean any interests other than that.

Mr. King is president of the Spottswood Specialty Company and the Guaranty Finance Company and owns some real estate in town.

Mr. Frank McCarthy is an attorney-at-law.

[118] Mr. Mainous is Chairman of our Board and devotes his entire time to the bank.

Mr. Patrick is more or less a retired land owner and farmer.

Mr. Peal is in the insurance business.

Mr. Redd is retired.

Mr. Roberts is in the real estate business.

Mr. Robinson is General Manager of the Central District Warehousing Corporation.

Mr. Strother is an attorney-at-law.

Mr. Thompson is president of the Lexington Laundry Company.

And Mr. Wallace is an attorney-at-law.

Q. The Central District Warehousing Corporation, for the record, is the largest combination of looseleaf tobacco warehouses in the county, is it not?

A. I believe it is, yes.

Q. Mr. Clarke, would you say that the members of the Board of Directors of the First Security National Bank are more influential or better representative citizens of the community than yours?

A. No, sir. All I will say is that they are very influential citizens of the community.

Q. So are yours, are they not?

[119] A. I hope so. I am sure they are.

Q. You believe they are?

A. I believe they are, yes.

Q. So far as a comparison between them is concerned, you feel that yours is as good as theirs, don't you?

A. Yes, sir.

Q. Now, let's consider for a few moments the officers of the two banks. Knowing your modesty, I will leave you out as a comparison with an officer of the other bank. But as far as the Chairman of the Board is concerned, do you consider that the Chairman of the Board of your bank is as efficient and knowledgeable and capable as the Chairman of the Board of the First Security?

A. How do you want me to answer that?

Q. Truthfully.

A. Just tell me. You answer it.

Q. It is obvious, isn't it, that you think he is just as efficient?

A. I don't see how I could answer that question. I think they are both fine and capable men.

Q. Yes.

Now, then, getting down to the lower echelons of the two institutions, how do you feel that they compare?

A. I am only familiar with my own.

Q. You think you do an efficient job with your employees?

[120] A. I certainly do.

Q. I believe you said that in connection with the merger that the merged bank might be able to employ, for instance, in connection with trust operations a research expert on and

someone who would be able to make special studies that your personnel would not be able to do; is that right?

A. That isn't what I meant.

Q. Well, what did you mean? I may have misunderstood you.

A. I meant simply this: with our limited trust operations, I would not feel that we could justify, for instance, going out and hiring a top tax expert, a top investment man, a person to solicit solely trust business, many of the fields of specialization within the trust business.

If we had as much trust business on our books as The First Security has on its books, I would feel that that would be justified.

Q. Do you feel that the employment of someone, as for instance an expert in that type of research, would enable Security to give better service?

A. Yes, sir.

Q. You are not complaining by that method that the public might receive better service, are you?

A. No. I want the public to get all the service it can get. But I don't want my competitors to be able to [121] offer better service than we are able to.

Q. Now, you testified, Mr. Clarke, if I understood you correctly, that in your opinion The First Security National Bank and Trust Company would have the power to enforce the rates it wished to charge for interest on its loans on other competitive banks in Lexington?

Am I misquoting you? Or did I misunderstand you?

A. I said it would have the power, in my opinion, to raid any one other competitor.

Q. Now, I am not quite sure that I understand exactly what you mean by that. Do you mean that you think The First Security National Bank and Trust Company could dictate to you what interest you charged on loans you made to your customers?

A. If they came to all of our customers and offered them a ridiculously low rate for the amount of money they are now borrowing from us, we would either have to meet that offer or

lose the business. I didn't say they would; I said they would have the power to do that.

Q. I understand. Do you think as a practical matter that that could practically be done?

A. Why, of course.

Q. Do you think that if the First National Bank went to your customers and offered to make them loans at ridiculously low rates that they might meet with some [122] questions from the bank examiner?

A. I have never had a bank examiner question the rate of interest on a loan, no, sir.

Q. Did you ever make one at a ridiculously low rate in order to take to the business away from your competitor?

A. No, sir.

Q. In your opinion, would it be sound banking to follow that procedure?

A. No.

Q. Could your bank do the same thing to banks that are smaller than you in Lexington and make a raid on their customers?

A. I think so. We would be very limited in the application of it, because we would soon run out of money.

Q. If First Security started making these loans at these ridiculously low rates, don't you think they would run out of money pretty soon too? Wouldn't the word get around?

A. The point I am making is that they could take all of our loans. We could only take a relatively small portion of their loans.

Q. The same thing would be true as to your relationship between your bank and, let us say, The Second National? You could take all of theirs; but they could only take a [123] small portion of yours?

A. No. We are not that big. We couldn't take all of anybody's.

Q. Have you in all your banking experience ever heard of a bank doing that?

A. There is tremendous competition in times of easy money for loans.

Q. I don't believe that answers my question.

Have you ever heard of a bank doing that in all your experience?

A. I have heard of banks taking business away on rates, your. Many times.

Q. But never making a raid on the customers of another bank as such?

A. I have never banked in a community in which one bank would be of such domineering size that it could do it if it wanted to.

Q. There are, however, many, many communities in the United States where the principal bank has a larger percentage of the assets than The First Security has of Lexington assets?

A. In towns of this size?

Q. In cities all over the United States?

A. I am not familiar with that.

[124] Q. You don't know about that?

A. No.

Mr. ODEAR. Could we have a few minutes recess, your Honor?

The COURT. Yes.

We will take a fifteen-minute recess.

(Whereupon, a fifteen-minute recess was taken.)

[125] The COURT. Anything further?

Mr. ODEAR. Yes, sir.

The COURT. Go ahead.

By Mr. ODEAR:

Q. Mr. Clarke, you testified, I believe, in substance on your direct examination that, in your opinion the fact that the merged bank, or First Security National Bank and Trust Company, held slightly more than 50 percent of the assets of all commercial banks in Lexington would give it a competitive advantage over the other banks.

Is that true?

A. Yes, sir, that's true.

Q. It was also your opinion, I believe, that that fact would enable it to enlarge that percentage and enable it to get more or a larger percentage of the banking assets of the community. Is that true?

A. I was referring there to the long pull.

Q. The long pull?

A. That's right.

Q. Eighteen or twenty years possibly?

A. Right.

Q. Are you familiar with the fact that back in 1942 the First National Bank and Trust Company had a larger percentage of the banking assets of this community than the present [126] merged bank has?

A. I wasn't here then.

Q. Are you familiar with the fact?

A. No, sir.

Q. Assuming that that is a fact—and we will avow that it will be placed in evidence—would you have expected that fact to have enabled it to have increased its percentage over the years if it held a competitive advantage?

A. If it took advantage of that competitive advantage, I would have thought it would.

Q. As a matter of fact, however, eighteen years later its percentage of assets immediately prior to the merger was approximately only 40 percent of the banking assets of this community, wasn't it?

A. I presume then it did not take advantage of that.

Q. At least it didn't operate to enable it to work a competitive advantage on the other banks in that instance, did it?

A. Not according to your figure.

Q. Mr. Clarke, in your opinion are the borrowing needs of the citizens of Lexington adequately taken care of at this time by commercial banks?

A. I think they are.

Q. Were they adequately taken care of prior to the [127] merger in March of 1961?

A. I think they were.

Q. And they still are?

A. Yes, sir.

Q. In your opinion has any worthy borrower with a properly bankable loan been refused to have his loan made in this community because of this merger?

A. Not to my knowledge.

Q. To your knowledge has First-Security National Bank taken any of your customers away from you since the merger?

A. I don't know who they are.

Q. You don't know of any?

A. No, sir.

Q. Do you know whether or not it is a fact that many businesses and individuals like to have at least two banks in the community in which they keep deposits?

A. I am sure several of them do.

Q. There were, of course, numerous people before the merger who maintained two bank accounts—one in The First National Bank and one in the Security Trust Company—were there not?

A. I am sure there must have been.

Q. Since the merger, if those persons desired to continue to maintain two bank accounts, what effect would that [128] have on the business of the other banks in Lexington?

A. I would hope they would come to us.

Q. They would go to somebody else in Lexington, wouldn't they?

A. They did that.

Q. Do you know whether or not your bank has acquired any business since the merger which formerly belonged to either of the two merging banks?

A. We acquired, I believe it was, a registrar of a company here in town——

The COURT. I can't hear you now.

The WITNESS. We acquired, I believe it was, a registrar for a stock issue, Judge, from a company here in town because

The First National was, I will say, the transfer agent and the Security Trust was the registrar.

I could be wrong on my terminology here. But they didn't deem it desirable to have both functions in the same bank, so they transferred the one or the other to us.

By Mr. ODEAR:

Q. Hasn't that happened twice since the merger?

A. I only knew of one, but there may be two.

Q. There may be another one?

A. Yes.

Q. Prior to the merger there was competition between the banks in Lexington for practically all the facets of [129] commercial banking, was there not?

A. I am sure there was.

Q. And since the merger there has continued to be competition for all those same facets of commercial banking, has there not?

A. With one less competing.

Q. But competition still continues to exist in all facets of banking?

A. Oh, sure.

Q. Has your particular bank experienced any particular difficulty in the obtaining of new business or deposits or the other facets of commercial banking since the merger which it did not experience prior to the merger?

A. I haven't been able to see much change. But as I said a minute ago, I don't think the public knows whether a merger has been accomplished or not.

Q. There is a complete freedom of choice as to customers who bank in Lexington as to what bank they do business with in general, isn't there?

A. In general, yes.

Q. They are free to make their demand deposits in any bank they desire?

A. Right.

Q. And withdraw them as they choose?

[130] A. Right.

Q. That existed equally before the merger as afterward, didn't it?

A. Right.

Q. How many alternate choices for a loan does the ordinary applicant have when he picks out a commercial bank in Lexington to get a loan?

A. Five, I think.

Q. He previously had six?

A. Yes.

Q. In your opinion, in a town the size of Lexington is five alternate choices not enough for a prospective borrower from a commercial bank?

A. I think it depends upon the relative size of those five alternate choices.

Q. Do you know what lending limit the smallest bank in Lexington has?

A. No.

Q. Would it be approximately $75,000?

A. I would think that would be about the limit of the Second National.

Q. So for loans up to that size, there are still five alternate choices?

A. Right.

[131] Q. Wouldn't a great majority of all loans fall in less than the $75,000 classification?

A. I would think so, yes.

Q. Wouldn't you consider five alternate choices adequate for loans of that size in a community the size of Lexington in Fayette County?

A. Yes, if they were in funds.

Q. That would be true, of course, whether the merger existed or not, wouldn't it?

A. Yes.

Q. Mr. Clarke, Lexington and Fayette County has undergone a rather rapid industrial growth in the last few years, has it not?

A. Yes, sir.

Q. There have been quite a few new industries and corpora-

tions which have established places of business in this community. Is that true?

A. Yes, sir.

Q. Have they in general brought banking business with them? In other words, have they made deposits and things of that kind?

A. As far as I know, they have.

Q. Have you considered yourself in a position to compete in obtaining those accounts?

[132] A. We have tried hard, sir.

Q. What have you felt about your results?

A. We haven't had the success we would like to have had.

Q. Was that true prior to the merger as well as afterwards?

A. Yes, sir.

Q. Of course your bank made an annual report in 1958, did it not?

A. We make one every year.

Q. I show you here what purports to be a photostatic copy of your annual report dated January 21, 1958. I want you to look at that, with particular reference to the last paragraph on this page, page 3.

In that report did you state: "We are most grateful that all of the large new industries located in Lexington and many of their personnel are using our bank, and we are confident of our ability to meet these added responsibilities"?

A. That was true at that time.

Q. And your bank again made such an annual report in 1961, did it not?

A. Yes, sir.

Q. I show you what purports to be a copy of your 1961 report.

[133] A. These get around, don't they?

Q. Yes, sir. What period of time is purported to be covered by that report, sir?

A. The year 1961.

Q. At that time you had been in competition with the merged bank, The First-Security National Bank and Trust Company, for approximately nine months, had you not?

A. I thought ten.

Q. Ten is right—the first of March. Would you please read to the Court the first sentence in that annual report?

A. I will be glad to read it all.

Q. I want to call your particular attention to the first paragraph, sir.

A. In this report?

Q. Yes, sir.

A. On page 1?

Q. Yes, on page 1.

A. "The year of 1961 was a good one for your bank with the continued and unprecedented growth in its business." Is that all you want—just the first sentence or the first paragraph?

Q. That is it—the first sentence. That "unprecedented growth" that you spoke of occurred—ten months of that was during this competition with the merged bank, wasn't it?

[134] A. That's right, sir.

Q. Look at the table on the first page of this report and see if your bank is shown to have increased its deposits by 21 percent over its deposits a year ago. Is that an accurate figure according to your recollection?

A. Yes, sir.

Q. According to that chart is it not true that all the other banks, except The Second National Bank, grew at a faster rate in 1961 than did the merged bank, First Security?

A. That's correct.

Q. Look at the last sentence on the first page of this report and read that to the Court, if you will.

A. "Our comparatively favorable ratios, particularly the very important ones of capital funds to deposits and to risk assets, assure us of the adequacy of our capital and of our ability to continue to attract desirable new business."

Q. Then you felt that you did have the ability to continue to attract desirable new business at that time?

A. Right.

Q. In the fourth paragraph on page 3 of this report you state that your gross operating income for 1961 was the highest in the bank's history, I believe. Is that correct?

A. Correct.

Q. And this again was during the first year in which you had had competition with the merged bank, First-Security, [135] was it not?

A. That is correct.

Q. How does that reflect on your ability to compete with the merged bank in your opinion, Mr. Clarke?

A. I have stated all through my testimony that my apprehension is over the long run, not the immediate effects.

Q. In the fifth paragraph on page 3 of that report there is a statement to the effect that on January 1, 1962, the Federal Reserve Board increased the maximum interest payable on savings deposits and that your board of directors authorized your bank to meet the competition.

That word "competition" there refers to what?

A. To what the other banks in town did. At the time we had our board meeting was early in December, and we at that time did not know what the other banks were going to do.

Q. It subsequently developed that the first bank to raise to the maximum rate was The Central Bank, the second smallest bank in town.

A. That is correct.

Q. Has that interest rate been increased from time to time over the past few years? Or was that one the only raise which has occurred in recent years?

A. I believe it started out in the Banking Act of 1933 or 1935 at 2.5 percent, and at some point along the [136] line it was raised to 3; and then this raise was to 4. I believe there has been one other raise since the law was enacted.

Q. As a matter of fact, there have been two, have there not, Mr. Clarke, to refresh your recollection?

A. I don't remember.

Q. You of course read the advertisements of other banks in Lexington? You keep up with them, read their ads, and things of that kind, don't you?

A. I try to.

Q. Are you familiar with the fact that The Central Bank has advertised that it has always been the first to raise interest rates when the law permitted it to be done?

A. I think I recall that.

Q. And during most of those occasions when those raises were made, it was the smallest bank in Lexington, wasn't it?

A. I believe that is right.

Q. Mr. Clarke, does the chart appearing near the bottom of page 3 on that report show that your bank grew more in total assets during the year 1961 than it did during the other previous four years combined?

A. Yes, sir, it does.

Q. As a matter of fact, the growth of your bank in [137] terms of total assets during that period of one year was over twice as much as during the four previous years combined, wasn't it?

A. That's right.

Q. Now I would like to call your attention to the last paragraph at the bottom of page 3, Mr. Clarke. Would you read that to the Court, please, sir?

A. "Our three branch offices continued to efficiently serve an important segment of our growing business and are responsible for our being able to attract many new customers. We are now serving more than 11,000 checking account and nearly 6,200 savings account depositors."

Q. That was, of course, a true and accurate statement of the situation? You wouldn't have put it in your report otherwise.

A. Yes, sir.

Q. Mr. Clarke, has the market value of the stock in your bank suffered any decline since the merger took place?

A. No, sir.

Q. What if anything has happened to your bank?

A. I am not sure there has been any change.

Q. So it is about the same?

A. There are so relatively few transactions.

Q. What about the book value of your stock since the [138] merger?

A. I wouldn't have any way to know what it was last March 1.

Q. During the one year 1961—ten months of which you operated as a competitor of the merged bank?

A. For the year it increased from $26.33 to $27.26.

Q. Mr. Clarke, do you have any reason to anticipate that the competition you will experience from the merged bank in 1962 will be any greater than the competition which you experienced from the merged bank during the first ten months of 1961?

A. I can imagine it being much greater.

Q. In what respect do you think it will be greater?

A. In my opinion the management of the merged bank has been a little preoccupied with extra-curricular activities for the past ten months, and they may be able to devote more time in 1962 to more actively competing.

Q. What about competition between banks in Lexington in general since this merger? Has it been more keen or less keen in your opinion?

A. I can see no difference.

Q. Would you look at the next to the last paragraph on page 4 of your report. Would you read that?

A. The whole paragraph, the next to the last paragraph?

[139] Q. Yes, sir.

A. "We again want to express our appreciation to you for your continued support and patronage. Because of the anticipated increased costs of doing business and even more intense competition in 1962, we urge you to even greater efforts to direct all of the business possible to your bank. We have the facilities, the financial resources, and the ability to handle all of the good banking business we can get."

Q. You do, then, have the facilities in your opinion and the financial resources and the ability to handle all of the banking business you can get?

A. That's right.

Q. And you can see no reason for that not to continue to be true through 1962 and the ensuing years, do you?

A. We said, "Because of the anticipated increased costs of doing business and even more intense competition, we urge even greater efforts to compete."

Q. But do you anticipate you will continue to have the facilities, the financial resources, and the ability to handle all the banking business you can get?

A. That's right.

Mr. OSBAR. Mr. Clarke, I would like to ask that that copy of the exhibit be filed as part of Mr. Clarke's [140] testimony, marked with the appropriate number.

The CLERK. Exhibit No. 2 for the Defendant.

(The above-mentioned 1961 annual report was filed with the Clerk and marked Defendant's Exhibit No. 2.)

Mr. OSBAR. I believe that is all at this time, Mr. Clarke. Thank you, sir.

The COURT. Anything further?

Mr. WILLIAMS. I have a few more questions, your Honor.

Redirect examination by Mr. WILLIAMS:

Q. Mr. Clarke, your bank, does it not, performs a number of services in its Trust Department which can be performed by widows with deceased husbands?

The COURT. Would you read that question, please?

(Pending question read.)

By Mr. WILLIAMS:

Q. I meant the question to read, Mr. Clarke: Does not your bank perform a lot of services in its Trust Department that a widow with a deceased husband can possibly perform?

A. She can legally perform them, yes, and does in many instances. I am not sure she can do it as well.

[141] Q. Your bank has corporate trust activities, does it not?

A. Oh, yes.

Q. A widow doesn't perform that——

A. No, in that field they can't at all.

Q. Your bank has——

A. No, other than another commercial bank and trust department, as far as I know, can perform corporate trust services in Lexington.

Q. Your bank has safe deposit boxes and a number of things that a widow can't supply.

A. That's correct.

The COURT. I don't think you meant to imply only that you rent safety deposit boxes to widows. You didn't mean to say that, did you?

The WITNESS. If I understood his question correctly, he said a widow cannot offer safe deposit——

The COURT. How's that?

The WITNESS. If I understood his question correctly, he asked me if a widow can offer safe deposit services. Was that your question?

The COURT. A widow can——

The WITNESS. Offer safe deposit services, and my answer was no, Judge.

[142] The COURT. Is that the question you asked him?

The WITNESS. I answered no.

By Mr. WILLIAMS:

Q. What I am trying to bring out, Mr. Clarke, is that your bank provides a lot of services in its Trust Department that an individual cannot perform. Is that correct?

A. That is correct, sir. There are many.

Q. You have on your board of directors a number of attorneys, do you not?

A. Three.

Q. You don't normally have on your board of directors competitors, do you?

A. No, sir.

Q. Mr. Clarke, prior to the merger, the Security controlled the stock of the newspaper. After the merger, a much larger institution controls that stock, does it not?

A. That's correct.

Q. What effect does the increase in the type of institution have?

A. Well, the size of the institution went from about $17 million to some $80 million. That is a right substantial jump in resources.

Q. So any advantage that the Security had as a result [143] of its control of the newspaper is accentuated considerably because of the merger.

A. Tremendously; tremendously.

Mr. ODEAR. Your Honor, I object to leading the witness quite so much.

The COURT. Go ahead.

Mr. ODEAR. I will withdraw the objection.

By Mr. WILLIAMS:

Q. Mr. Clarke, I believe you testified that prior to the merger a customer could actually obtain more money from the Security and First National if he went to both of them, than the same customer could from the merged institution.

Mr. DAVIS. That is objected to. He didn't so testify.

The COURT. I hardly think your quotation of the witness's testimony is correct. See if you can't get at it by asking him what he said.

By Mr. WILLIAMS:

Q. Mr. Clarke, isn't it a fact that prior to the merger a single prospective customer could have gone to the Security Trust Company and to The First National Bank, and between those banks—because of their lending limits—obtain more money than the same customer can now get from the merged institution?

[144] Mr. DAVIS. That is objected to.

The COURT. What is the objection?

Mr. DAVIS. The objection to it is that a single customer——

The COURT. I can't hear you.

Mr. DAVIS. I say the grounds of the objection is the ability of a customer to get a loan from a bank depends on many things beyond the lending limits.

The COURT. I understand. But he said the same customer subsequent to the combination. I don't think there is anything difficult. He said it half a dozen times.

Mr. OBEAR. He said it in chief.

The COURT. I don't see why he has to say it over again.

The WITNESS. I would like to add this to it, Judge. They not only could, but did, in many instances.

By Mr. WILLIAMS:

Q. But as a result of the merger, is it not true that one institution now can make a larger loan than the single institution?

A. Than either one of the previous, right.

Q. Mr. Clarke, cannot a bank cut its lending rates in a move to attract customers away from another bank without reaching so-called ridiculously low rates?

[145] A. Oh, yes. It doesn't take much shading usually.

Q. So that you can pull the customers away from another

bank by cutting the rate very slightly without getting to ridiculous levels.

A. That's correct.

Q. Mr. Clarke, does not your bank have a number of customers that are also customers of other banks in Lexington?

A. Oh, yes.

Q. Isn't that true generally in Lexington?

A. I would think so.

Q. Since, say, 1940 or the period—whichever it was—when First National had roughly 48 percent of the deposits of the banks in Lexington, haven't there been some changes in the banking situation in Lexington? Has not Security gone into the commercial field since that time?

A. That's correct; and a bank was taken over. I am not sure of my dates. It was before I came here, but only shortly before I came here—and converted The Central Bank from almost a credit union operation into an aggressive commercial bank.

So you have actually had two banks enter the commercial bank field in that period.

Q. And of course two institutions merged into your bank since that time. Is that not correct?

[146] A. That's correct.

Q. Have there not been changes in the economic development of the community?

A. Tremendous.

Q. In your opinion have these changes affected the relative position of the competing banks in the area?

A. I am sure it has because of the entrance of The Security Trust Company into the commercial bank field—you might say the entrance of The Central Bank into the commercial bank field.

They have made, I am sure, substantial inroads on the other commercial banks in town.

Q. Mr. Clarke, could First-Security, if it chose, exert a great deal of pressure on tenants of its trust properties to do commercial business with it if it chose to do so?

A. I would think so. In fact, I have seen it happen.

Q. In your opinion, Mr. Clarke, has the pendency of this lawsuit had anything to do with the changes which may have

occurred in the relative positions of the banks in the City of Lexington?

A. I am not sure I know how to answer that. I think the lawsuit has confused the public as to whether this merger is an accomplished fact or not.

Q. Mr. Clarke, if this lawsuit is disposed of and the [147] merged institution is allowed to stand, then what do you think the effect will be on competition?

A. Well, I think only then will the community feel the impact of the merger. As I say, the immediate impact, I think, might even tend to shift some business around a little bit. The long pull, the long-range impact, is the one I am apprehensive about.

Q. What motivated you in going to Washington to talk to the regulatory authorities about the proposed consolidation?

A. I had read the 1960 Bank Merger Bill passed by Congress, I believe in June of 1960. To my knowledge it was the first time that the Congress had clearly expressed the fact that competition must be considered in approving or disapproving a bank merger.

It made it mandatory that the appropriate regulatory agency consult with the two other bank regulatory agencies, and, in addition, the Department of Justice, on the competitive aspects of a merger.

I didn't see how the Comptroller could possibly approve this merger if he was aware of all the facts of the case. There must have been some grounds to my belief because the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Department of Justice reported to him, as I [148] understand it, that the competitive aspects of this merger were very unfavorable.

Q. What was your view?

A. That bore out my reasons for going to Washington, and it wouldn't have occurred to me that there was any avenue of opposing the merger if it hadn't been that Congress had just spelled out the conditions that must be considered by the appropriate regulatory agency in approving them or disapproving the merger.

In fact, the Federal Reserve Board had denied the Citizens Fidelity Bank and Trust Company in Louisville the right to

merge with the Bank of Louisville; and from my recollection of the figures there, the merged bank would have had in the neighborhood of 36 percent.

Mr. ODEAR. Your Honor, that sounds like argument to me.

The COURT. Let him go. He is telling about going to Washington. He has a right to.

The WITNESS. I felt I did, Judge, or I wouldn't have.

The COURT. I want to hear your reasons. Go right on.

[149] The WITNESS. As I say, the Federal Reserve Board had just turned down, I presume more or less in accordance with this mandate—if it had been made, or at least in accordance with their best judgment—this merger in Louisville.

I am not sure about the reasons for which they turned it down. But, nevertheless, they did. And the resulting bank there would have had only about 35 percent of the banking resources in Louisville. That is one of the things that encouraged me to lay the facts in front of the Comptroller and the other agencies. And when I say "encouraged me", I was not alone. There were three other banks.

Mr. WILLIAMS. No further questions, your Honor.

Mr. ODEAR. Very briefly on something he brought out.

The COURT. All right.

Recross-examination by Mr. ODEAR:

Q. Mr. Clarke, you said you had some lawyers on your Board but you didn't have anybody on there that was a competitor of yours, I believe? Is that right?

A. He asked, as I understood the question, that you don't have competitors on your Board of Directors.

Q. That is right. But you did have some lawyers there? And, therefore, they are not competitors? Is that [150] it?

A. I don't consider them as such.

Q. Now, you also have a representative of a building and loan association on your Board, don't you?

A. Who is that?

Q. Mr. Frank McCarthy.

A. I thought he was an attorney.

Q. Isn't he also a Director of The First Federal Savings and Loan Association?

A. I am not sure.

Q. You don't know that?

A. He is the attorney for them.

I am not sure whether he is a Director or not. He may be.

Q. Justin is the president?

A. I know that Justin is the president. Frank may be a Director.

Q. As a matter of fact, he is vice president? You are not familiar with that?

A. I don't know that.

Q. How about Mr. Mainous, isn't he on the Board of a building and loan association?

A. Yes. He was instrumental in organizing it.

Q. Building and loan associations are to some extent [151] competitors of your bank?

A. I think that is argumentative. But for the sake of the record, I will say yes.

Q. Now, what tenants of the trust property of First Security National Bank and Trust Company have they obtained accounts from by reason of that tenancy?

A. Well, I know of one instance in which the president of a concern coming to town was an intimate personal friend of mine. And he promised me the account. Come time to open for business, he said "I am sorry, I just can't do it." He said, "I am in property controlled by the bank."

Q. What individual was that?

A. Do I have to name him? He is dead now.

Q. That is all right. I won't insist on it.

Is that the only one that occurs to you?

A. I have solicited many other accounts in which they have told me because of their lease arrangements they could not do business with us.

Q. Your statement is based on things that you have heard from persons who were tenants?

A. That is right.

Q. Would you mind telling us who some of those are if there are any of them alive?

A. Those are corporations.

[152] Q. Corporations?

A. Yes.

Q. Who are they?

A. You can almost go from one end of Main Street to the other, Bob.

Q. Ones you have talked to?

A. Yes.

Q. Tell us two or three of them?

A. All right. The McCrory Stores.

Q. Whom did you talk to there?

A. The treasurer, I presume.

Q. Do you recall the gentleman's name?

A. No.

And W. H. Rowland.

Q. Do you know whom you talked to there?

A. That was purely and simply with the Phoenix Hotel setup.

Q. When were these conversations? These were back before the merger, weren't they?

A. Yes. I am not talking about anything since the merger.

Mr. ODEAR. That is all.

The COURT. I guess you may be excused, Mr. Clarke.

The WITNESS. Thank you.

(Witness excused.)

[153] The COURT. The Court will take another witness this afternoon.

Mr. WILLIAMS. We have another one ready, your Honor, but it will take a considerable amount of time. So, if it is convenient, we can start him in the morning.

The COURT. We will be in recess until in the morning at 10:00 o'clock.

(Whereupon, at 4:00 o'clock p.m., the Court recessed until 10:00 o'clock a.m., Tuesday, February 20, 1962.)

[155] In the United States District Court Eastern District of Kentucky

Transcript of Testimony and Proceedings—February 20, 1962

[156] PROCEEDINGS

The COURT. Gentlemen, will the parties step up to the Bench.

(Conference at the Bench.)

The COURT. Gentlemen, I am ready to proceed.

Mr. SPAETH. The Government calls as its next witness Mr. Stilz.

Whereupon Robert C. Stilz was called as a witness, and, being first duly sworn, was examined and testified as follows:

The CLERK. The witness, your Honor, is Robert C. Stilz.

Direct examination by Mr. SPAETH:

Q. What is your occupation?

A. I am president of the Bank of Commerce of Lexington, Kentucky.

Q. How long have you held that position?

A. Since 1955.

Q. What was your previous experience before becoming president of the Bank of Commerce?

A. I have been a practicing attorney since 1941. [157] And since 1947 I have been an executive officer of the Bank of Commerce.

Q. What types of banking services does your bank provide?

A. All commercial types of banking services and trust facilities.

Q. What percent of your customers are located in Fayette County?

A. Over 97 percent. That is, both numerical-wise and volume-wise, dollar-wise.

Q. Is that true of both deposit customers and loan customers?

A. Relatively the same figures on both.

Q. Who are your competitors, Mr. Stilz?

A. The other commercial banks in Lexington, Kentucky.

Q. How does your bank compete with other commercial banks in Lexington?

A. We compete with them in the obtaining of demand deposits, savings deposits, safety lock box holders, trust accounts.

Q. Do you compete with respect to loans?

A. Yes, sir, in the making of loans.

Q. How do you compete with other banks in the making of loans?

[158] A. We compete with them through solicitation, in some instances with respect to interest rates to borrowers.

Q. How do you compete with other commercial banks with respect to demand deposits?

A. Through advertising media, personal solicitation. That is about the general way.

Q. What is the approximate total of the bank of Commerce's deposits at the present time?

A. Approximately $22 million.

Q. What is the approximate percent represented by demand deposits?

A. 75 percent.

Q. And the other 25 percent?

A. That is represented by savings deposits and certificates of deposit.

Q. What is the difference between a demand deposit and a time deposit?

A. Well, a demand deposit is a deposit that is payable upon demand of the depositor by check. A savings depesit is a contract deposit where the depositor places his deposit in a savings account and draws interest on that deposit. The bank does not have to pay out on that deposit upon demand if it does not desire to.

[159] Q. Does that difference between demand and time deposits have an effect upon the type of investments your bank can make?

A. Yes, sir.

Q. What is that effect?

A. Your demand deposits by their very nature require that your investments or loans be of short maturities. Your savings deposits would allow you to make some longer term loans.

Q. Do you submit reports of your bank's condition to any federal authority?

A. Yes, sir. To the Federal Reserve Board.

Q. Do those reports require the breakdown of loans by certain categories?

A. They do.

Q. Are commercial and industrial loans one such category?

A. Yes, sir.

Q. What is a commercial and industrial loan for the purpose of that report?

A. Those are loans made to businesses, either small or large, and to industries.

Q. What is the average term of such a loan?

A. Approximately 90 to 120 days in our particular [160] instance.

Q. About what percent of your total loans are represented by commercial and industrial loans?

A. Approximately fifty percent.

Q. With whom does your bank compete in making that kind of loan?

A. The other commercial banks in Lexington.

Q. Does your bank make real estate loans?

A. It does.

Q. What is the average term of such loans as made by your bank?

A. The great volume of our real estate loans are made on one-year maturities. In rare instances, we will make loans of up to five years maturity.

Q. With whom does your bank compete in making such loans?

A. The other commercial banks in Lexington.

Q. Does that report to the federal authority list a loan secured by a non-farm, non-residential mortgage?

A. Yes, sir.

Q. What are those loans, Mr. Stilz?

A. That would be a loan to a business or industry upon a commercial or mercantile type of property.

[161] Q. What is the average term of such loans?

A. In our instance, one year maturities.

Q. With whom does your bank compete in making such loans?

A. With the other commercial banks in Lexington.

Q. Does that report to the federal authority also list a single-payment loan to individuals?

A. It does.

Q. What is that loan?

A. That is a loan to an individual for some specific requirement such as an emergency. It may be for income tax purposes where a person needs the money for four months to maybe six months and pays it off at its maturity.

Q. With whom does your bank compete in making such loans?

A. The other commercial banks in Lexington.

Q. Mr. Stilz, in your opinion, to what extent are Lexington business people dependent upon the local commercial banks for commercial and industrial loans?

A. I would say they are totally dependent upon the commercial banks of Lexington.

Q. Does your bank maintain accounts with other banks?

A. It does.

[162] Q. What do you call such banks?

A. Correspondent banks.

Q. Where are your correspondent banks located?

A. Louisville, Kentucky; Cincinnati, Ohio; Chicago, Illinois; Detroit, Michigan, and New York.

Q. What are your correspondent banks in Louisville and Cincinnati?

A. In Louisville we maintain accounts with The First National Lincoln Bank and Trust Company, Citizens Fidelity Bank and Trust Company, The Louisville Trust Company, and The Liberty National Bank and Trust Company.

In Cincinnati, the First National Bank of Cincinnati, the Central Trust Company, and we maintain our legal reserve with the Cincinnati branch of the Federal Reserve Bank of Cleveland, Ohio.

Q. What types of services do you secure from your correspondent banks?

A. Well, they act as a depository for our money that we are not using. They clear checks for us, drafts, we draw drafts

on them. In many instances we obtain advice from them concerning investments or pertaining to certain loans. They act as a safekeeping agent for our securities in many instances.

Q. What can those banks do with the deposits they [163] receive from you?

A. They can, in turn, lend them out, use them to make up their reserve requirements that they might need.

Q. What types of communication do you use, Mr. Stilz, in placing or withdrawing funds with your correspondent bank or with the Federal Reserve Bank?

A. We use the United States mail services, telephone, and telegraph.

Q. Mr. Stilz, do you or do you not consider your bank to be in competition with your correspondent banks?

A. We do not.

Q. Why is that?

A. We are not in the same geographical area of competition mainly. Our customers are not customers of theirs.

Q. Do they solicit business in your area?

A. Not to my knowledge.

Q. Is there some sort of understanding about that?

A. Yes, sir. You wouldn't keep your money with another bank and have them use your money to solicit your business. I don't think that would be very practical or it wouldn't be good business to do that.

Q. Does your bank operate a trust department?

A. It does.

[164] Q. How long has that department been in operation?

A. Our bank has had trust powers since 1916. And I assume it started operating then. I can't tell you that from personal knowledge.

Q. What are some of the types of business conducted by the Trust Department of the bank?

A. We act as executor of estates, administrator, administrator with will annexed, guardian, committee, trustee.

Q. Does your bank have any corporate trust accounts?

A. It does at the present time, yes.

Q. What kind of accounts are these?

A. In general, in your corporate accounts the bank can act

as registrar, transfer agent, paying of coupons on bonds, trustee for corporate retirement funds or pension funds.

Q. What are some of the characteristics or advantages of a bank's trust department?

A. Well, it is another form of income-producing service that the bank renders. It complements the Commercial Department; the Commercial Department complements the Trust Department.

Q. What are some of the Trust Department's characteristics in acting as trustee as opposed to, say, an individual?

[165] A. The advantages you mean?

Q. If you want to call them that, yes.

A. A corporate trustee has the advantage, first, of continuity of life. It has the advantage of being able to have experienced personnel, and in some instances technical personnel. You have collective or group judgment on investments or on making decisions as opposed to individual judgment.

Q. Do you consider, Mr. Stilz, that your bank is in competition with individuals for trust accounts?

A. Not in the strict sense, no, sir. I know of no individuals that hold themselves out to the public to act as executor or trustee or who advertise that they will act as executor or trustee.

Q. Are these various characteristics of banks' trust departments that you have described, such as continuity of life, et cetera, important aspects of trust business?

A. In our opinion, it is, yes.

Q. Does anyone other than a bank have such characteristics?

A. Not that I know of. That is, in this area, I should say.

Q. Has your bank been trying to build up its trust department, Mr. Stilz?

[166] A. Yes, it has.

Q. Is there any significance in a bank operating both a Commercial and a Trust Department?

A. It is advantageous to the bank. As I stated before, each department complements the other or acts as a feeder for the other. In many instances, if you have a very large Trust Department that controls quite a bit of rental property in a com-

munity, through the renting and leasing to tenants, particularly new tenants coming into the community, you would have first shot at meeting them and soliciting their commercial business. I would think it would be a great advantage.

Q. What effect, if any, does operating a large commercial department have on the bank's ability to build up its trust department?

A. It has a very definite advantage. There is a large field of potential trust business to solicit from and the bank has peculiar knowledge of their financial situation and can in many instances influence the depositer to make a trust agreement or to leave the bank as executor of his will.

Q. Do you consider that your bank is in competition with First Security in the trust field?

A. Yes, sir.

[167] Q. Prior to March 1, 1961, did you consider your bank to be in competition with First National and Security Trust in the trust field?

A. Yes, sir.

Q. Mr. Stilz, is advertising an important factor in bank competition?

A. Very important.

Q. Do you do advertising?

A. Yes, sir.

Q. In what media?

A. We use the newspapers, radio, television, pamphlet type of advertising, stuffers they are called in some instances.

Q. In what newspaper do you advertise?

A. The Lexington Leader, Lexington Herald.

Q. Do you know who owns the Lexington Leader and Lexington Herald?

A. The stock is held in trust by the First Security National Bank and Trust Company. The managing directors, according to the will of Mr. John Stoll, are the president of The Security Trust Company, Mr. Gale Mohney, and Mr. Fred Wachs.

Q. In your opinion, Mr. Stilz, is there competitive significance in the fact that First Security holds this [168] stock in the Lexington Herald-Leader through its Trust Department?

A. I think there is a lot of significance to it.

Q. Why? What is the significance?

A. They can certainly use the paper as a power influence. The power it gives them may influence business, acquire new accounts.

For example, during the pendency of this trial and the proposed merger of these two banks, there have been several editorials to appear in the newspaper favorable to the merger of these two banks. That is newspaper space that my bank can't buy.

As a matter of fact, there was one editorial run that questioned the merit of the Government bringing this action; that it was merely politics on the part of Mr. Kennedy.

[169] Q. Mr. Stilz, is your bank in the market for long-term first mortgage loans?

A. No, sir.

Q. Why isn't it?

A. Due to the large amount of our deposits that are demand deposits, we must keep our loans on short maturity.

Q. Do you refer applicants for long-term real estate mortgages to other institutions?

A. We do.

Q. What other institutions?

A. To the savings and loan associations; to the life insurance companies who make that type of loan.

Q. Do you consider your bank to be in competition with savings and loan associations in the lending field?

A. Not with respect to lending.

Q. Do you consider your bank to be in competition with life insurance companies?

A. No, sir.

Q. Why is that, Mr. Stilz?

A. We are not interested in the same type of loans that they are interested in. Life insurance companies are interested in good first mortgage loans over a long pay-out period where they don't have to keep re-investing their money.

Q. Do you consider your bank to be in competition with [170] small loan companies?

A. In a very limited sense. By that I mean there are probably some borrowers from small loan companies that banks

could handle their business if the borrower saw fit to apply to a bank. I would say those instances are, percentage-wise, small.

Q. What about the remaining people served by the small loan companies?

A. Their type of loan is of such a great risk that a bank would not be justified in making the loan at the low interest rate that banks by statute are allowed to charge.

Q. Mr. Stilz, in your opinion what effect, if any, will the size of First-Security, by virtue of this consolidation, have upon the ability of your bank to compete with it?

A. Well, it has been hard competition in the past. When it had, say, 40 percent of the deposits in Lexington, or higher some years back, it has been very difficult. I assume that by being that much larger, it will be that much more difficult to compete.

Before the merger we were approximately—First National was approximately three to three and a half times our size. Now they are four and a half times our size.

Q. Mr. Stilz, if as a result of the merger First-Security was better able to attract the loans and deposits of large [171] corporations, what effect will that have in your opinion on competition?

A. That will just give them that much more preponderance of the assets of the community, that much more deposits, allowing them to make that many more loans; give them increased income to spend more money for advertising, more money for technical help, personal solicitation.

Q. If as a result of the merger First-Security is able to improve its Trust Department and secure larger estates than the consolidating banks were able to secure, what effect will that have in your opinion on competition?

A. That will give them that much more income to do that much more advertising, that much more skilled help. I could foresee in the future a situation where they would get so big and be such a dominant factor in the field of trusts that it might not be profitable for other banks to even operate a trust department.

Q. In your opinion, Mr. Stilz, do you think the consolidation will cause any other banks in Lexington to merge?

A. In my opinion it will cause the remaining banks in Lexington to seriously consider attempting to put a bank together that would be somewhere near the size of the First-Security so that they could compete against their bigness.

I don't know that that will happen, but I could see [172] where it would be given serious consideration.

Q. In your opinion, Mr. Stilz, what would happen if First-Security made a determined effort to take away your customers?

A. I could see where they would be very effective in soliciting our customers. If they wanted to offer a more attractive interest rate than we felt we could or should offer, they could influence our customers pretty quick that way.

I do not mean by a ridiculous interest rate; in many instances a half a percent will move a lot of business.

Q. Mr. Stilz, is the capital structure of a bank an important factor in bank competition?

A. It is in its ability to lend money.

Q. How is the lending limit of a bank determined?

A. In our particular instance we are a state chartered bank. We are allowed to lend 20 percent of our capital and surplus to any one individual partnership or corporation.

In the instance of a national bank, their lending limits are based upon 10 percent of their capital and surplus.

Q. Are undivided profits part of a national bank's capital for the purpose of determining its lending limit?

A. No, sir.

Q. In what ways can a bank improve its capital position?

[173] A. First comes to mind the sale of new capital stock. Naturally it would increase the bank's capital position. It could issue stock dividends out of undivided profits, which would increase the capital; or they could increase their surplus account by the transfer of funds from undivided profits to the surplus account.

Q. Has your bank used any of these ways to improve its capital position?

A. Since 1950 we have increased our surplus account by $700,000. A little over two years ago we sold an additional

25 percent of our then present capital in new capital stock, which increased our capital by $100,000 and our surplus by $200,000.

Q. Did you experience any difficulty in selling that stock?

A. No, sir. It was taken up immediately and was oversubscribed promptly.

Q. Mr. Stilz, has it been a fairly usual practice for business customers in this area to have at the same time loans outstanding at more than one local bank?

A. Many instances of that, yes.

Mr. SPAETH. That is all, Mr. Stilz.

Cross-examination by Mr. ODEAR:

Q. Mr. Stilz, are there fields in commercial [174] banking in which you have competition from non-banking sources?

A. Mr. Odear, I would say that—as I mentioned—the small loan companies could be considered in a minor sense as competing with banks. I am not too familiar with the operation of credit unions. I assume they in some respects would be in competition with commercial banks.

However, I believe their lending is predicated upon you being an employee of that particular company before you could qualify for a loan. I believe that is the general rule. I don't know too much about the credit union.

Q. Both of those examples are in the lending field that you have mentioned.

A. Yes, sir.

Q. It is true, is it not, that you do lend money on real estate mortgages—commercial banks?

A. We do.

Q. And that there are numerous other non-banking sources which lend money on real estate mortgages?

A. There are.

Q. Speaking about the maturities of your real estate loans, I believe you said most of them were one year?

A. A great majority are one-year maturities.

Q. While that is the legal maturity of the loan, isn't it a fact that many of those loans are made on, say, a monthly [175] payment basis?

A. They are.

Q. And monthly payments calculated on a maturity or a pay-out over a period of ten or ten and a half years?

A. That is true.

Q. So that it is actually contemplated that, unless some unusual circumstances arise, the loan will be renewed from time to time until the ten and a half year pay-off can be made?

A. That is usually contemplated if there are no emergencies come up or anything.

Q. As a matter of actuality, that is the way most of them do work out, isn't it?

A. A large number do; yes, sir.

Q. When the payments are met promptly and on time, then the extension is made and they are carried on so that the originally contemplated ten and a half year maturity becomes the actual one.

A. That is correct. However, the bank does not obligate itself to carry the loan for longer than one year.

Q. That is correct. The legal obligation is for the payment when the note comes due, and that is one year.

A. That is correct. In many instances that is not attractive to the borrower, as you could well see.

[176] Q. When loans are made by life insurance companies, ordinarily on real estate loans they run around fifteen years, don't they.

A. I would say fifteen to twenty-five years would cover the bulk of the field.

Q. Are you familiar with any life insurance loans that are made in the neighborhood of ten-year maturity?

A. Yes, there are some.

Q. So that to that extent there would be a field where a person might borrow from your bank or might borrow from an insurance company on that type of loan.

A. They could.

Q. So to that extent you would be in direct or indirect competition.

A. In a strict sense we would be, yes.

Q. The building and loan associations lend principally on residential property, do they not?

A. I would say the bulk of their lending is on residential property.

Q. You also make loans on residential property, do you not?

A. Yes, sir.

Q. There again there is a difference in the maturity of the loans made?

[177] A. Yes, sir.

Q. To the extent that you can convince the prospective borrower that your type of loan is better for his situation than theirs, you are in competition with him for those loans, aren't you?

A. In that strict sense we are.

Q. What about commercial paper? You make loans on commercial paper, do you not?

A. What types?

Q. For instance, on the financing of automobiles.

A. Yes, sir, we do.

Q. That is a rather lucrative business, is it not?

A. Yes, sir.

Q. The fact that there are so many automobiles purchased and such a high percentage of them are purchased on time or on some kind of financial loan arrangement makes it a field in which there is a large amount of money invested. Isn't that true?

A. That is correct.

Q. Are you in competition with any non-banking sources for that type of loan?

A. We are with respect to companies like GMAC, C.I.T. I think there is a Universal Credit, I believe. I am not sure of that.

[178] Q. Yes, sir—Universal Credit Corporation.

A. Yes, sir.

Q. So companies of that type are also in competition with you for that type of loan?

A. They are.

Q. With reference to loans for other types of personal property—appliances, refrigerators, and things of that kind—do you make loans of that type?

A. We do in some instances—just not to the general public.

Q. Do you have a separate consumer credit division?

A. We do.

Q. Do they make that type of loan?

A. They do.

Q. With reference to loans of that type, are you in competition with non-banking sources?

A. There are some sales finance companies—I believe they are referred to—that finance appliances. In many instances the manufacturer will have their own credit corporation—I am thinking of Westinghouse—where they sell volume appliances to someone who will finance them through their credit corporation.

Q. Again in the field of loans, are there individuals in the community who lend money?

[179] A. Oh, I am sure that there are. I don't know that they make a business or profession of it, but I know there are individuals who like real estate mortgages as a type of investment. If they accumulate some money that they want to invest, they will invest in real estate mortgages.

Q. Do you keep up with the percentage of loans made to individuals or by individuals and by banks in the real estate field in Fayette County?

A. No, sir, I don't.

Q. Does your bank subscribe to the Retail Credits Report?

A. It does.

Q. Doesn't that list the real estate mortgages that are recorded, and recapitulate them to show how many loans are made by banks and by individuals and so on?

A. That is correct. But I believe you will find, Mr. Odear, in the past few years that most of those individuals that you will find listed in there are taking second mortgages on property they have sold, which a bank is not allowed to take.

Q. But, at any rate, there is a substantial amount of lending by individuals in the community on real estate?

A. I assume that there is. I have compiled no figures whatsoever on that.

Q. You have made no study?

[180] A. No, sir, I haven't.

Q. Have you made any particular examination of these reports that I asked you about?

A. I look at them fairly regularly every week.

Q. They do show substantial amounts, do they not, loaned by individuals on real estate?

A. Number-wise I would say a substantial amount. Volume-wise, I don't know—or dollar-wise.

Q. Does your bank make FHA Title I loans?

A. We do not.

Q. You are eligible to make them, of course?

A. We could, yes.

Q. Why do you not make them?

A. We have never got into that field. We make a type of loan that compares to the FHA, but it naturally is not an insured loan. We feel if the borrower is entitled to the credit we don't need the insurance. We feel if the loan is of such a nature that it ought to be insured, then we oughtn't to make the loan.

That happens to be merely a private opinion on that, and I have nothing against the FHA Title I loans.

Q. But there is an additional factor of considerable red tape in making that type of loan?

A. Yes, sir, that is correct. That may be one of the [181] big features of why we don't.

Q. At the present time the banks in general in Lexington are fairly well loaned up on the basis of percentage of deposits that are out on loan and matters of that kind, are they not?

A. I would say they are in a very comfortable money-making position at the present time in the matter of loans, yes, sir. I wouldn't say that they are all loaned up; there is still money available.

Q. I agree. But my point is that most of the banks are not really hurting for a place where they can make a loan.

A. No, I wouldn't say they are hurting, no. But banks are always looking for good loans.

Q. That is true in Lexington, isn't it?

A. Yes, sir.

Q. It is true as far as you know of all the banks in Lexington?

A. As far as I know, yes, sir.

Q. In your opinion, carrying that a step further, Mr. Stilz, if there is a person in Lexington who has need for a good bankable

loan, would he have difficulty in finding a place to take out a loan?

A. No, I don't think so.

Q. Before this proposed merger there were six alternate choices where he could go, were there not?

[182] A. That is correct.

Q. And now there are five?

A. That is correct.

Q. Do you know of any occasion where a borrower with a bankable loan has been unable to place it at one of the five present alternate choices?

A. I don't know of any, no.

Q. Again referring back to the various lending functions of commercial banks, are there any other lending operations of your bank which are in competition with non-banking services that you can tell us about? You named several.

A. Not that I can think of at the present time. If you have any in mind, I don't mind answering.

Q. Let's pass from the lending field now. One of the functions of banking is the acquiring of deposits, is it not?

A. Yes, sir, a very important function.

Q. In other words, that is the main source of the funds which you have to lend?

A. That is the only source.

Q. You also have some——

A. Capital, yes, sir.

Q. Mr. Stilz, on time deposits or savings accounts, are there any non-banking institutions which are in competition—direct competition—with you in that field?

[183] A. I would have to say that the savings and loan associations are definitely competition to our savings deposit accounts—more so in the past than they are at the present time due to the differential in the dividend rate, as they call it, they can pay.

Q. In spite of the fact there has been a recent raise in the amount of interest which a bank could pay on its time deposits, do you know whether or not it is a fact that the building and loan associations still have a great majority of the money that is invested in Lexington on time deposits?

A. They have large amounts of it, yes, sir.

Q. Considerably more than the commercial banks, don't they?

A. I believe that is correct, yes, sir. I don't know about considerably more; but I would say they have more, yes, sir.

Q. Directing your attention to the so-called credit unions, do they offer investment opportunities of that sort to wage-earners who might otherwise invest in time deposits in banks?

A. I don't know, Mr. Odear. I assume that they do. I don't know what their policies are.

Q. Now then, with reference to trusts, it is true, isn't it, that most of the probate trust functions, or a majority of them, or a majority of cases of them, are performed [184] by individuals rather than by institutions in Fayette County?

A. It would be my opinion that, number-wise, there are more individual fiduciaries appointed in this area. Volume-wise—that is, dollar-wise—it would be my opinion that the corporate fiduciaries would be on top. I have not made a study of that. That is merely my offhand opinion.

Q. You do not have the facts on which to base that?

A. I do not, no, sir.

Q. You do know, though, that a great volume—whether it is large or small—or at least a substantial volume of that business, is taken care of by individuals?

A. It certainly is. However, as I stated on my direct testimony, I know of no individuals who hold themselves out to act as such and use advertising methods to obtain that type of business.

Q. But, in spite of the fact they don't hold themselves out, they still get it?

A. Yes, sir, you are correct.

Q. You do advertising for your Trust Department, do you not?

A. Yes, sir.

Q. Is some of that advertising directed to calling attention of the public to the fact that a corporate institution such as your bank has certain advantages over individuals who [185] administer trusts of that kind?

A. It is.

Q. That is directed towards the proposition that you realize that you are both in competition for the same class of business, isn't it?

A. We direct our advertising to those persons who recognize the advantages of a corporate fiduciary in the hope of acquiring their business.

Q. And in the hope of trying to persuade members of the public that it is better to have your bank than to have an individual do it?

A. That is the purpose of the advertising.

Q. With reference to the Trust Department of your particular bank, Mr. Stilz, what personnel do you have in the Trust Department?

A. We employ two full-time employees and one part-time trust officer.

Q. The part-time trust officer: Is that Mr. Ellis?

A. Yes, sir, it is.

Q. Mr. Ellis, I believe, has testified by deposition that he spent approximately 5 percent of his time on trust business. Would you say that estimate is approximately correct?

A. That is the testimony he gave. I believe in my deposition I stated I thought he did about 30 percent. I would [186] say his estimate is better than mine. He ought to know better than I do.

Q. The other 95 or 70 percent—as the case may be—he spends working on other functions of the bank?

A. That is correct.

Q. He is the part-time employee you spoke of?

A. Yes, sir.

Q. Who are the two full-time employees?

A. Mrs. Oma Bourne is full-time bookkeeper and secretary. The other lady—I can't think of her first name, but I can think of her last name.

Q. I am not as much interested in her name as in what she does.

A. She is also a bookkeeper and a secretary.

Q. Mrs. Bourne is an elderly lady who has been handling the trust matters for many, many years at your bank in a bookkeeping capacity, is she not?

A. Yes, sir.

Q. Is she more or less on a pension now, Mr. Stilz?

A. No, not yet. She is still there every day.

Q. How long have you had that set-up in your Trust Department?

A. I don't know how to answer that exactly. The young lady whose name I couldn't think of who works in the department has been devoting her time for the last approximately two [187] years, due to the advanced age of Mrs. Bourne—she needed help to carry out her duties; it did not come through any great increase in our trust business, Mr. Odear, if that is what you are driving at.

Q. I am just trying to get to what extent you have employees working on this matter alone.

A. We for many years used one full-time employee.

Q. That was Mrs. Bourne?

A. That is correct.

Q. Mr. Stilz, was Mr. Joe Smith a director of your bank at the time of his death?

A. Yes, he was.

Q. Did your bank serve as his personal representative?

A. His widow did.

Q. The bank did not, in other words?

A. His widow and nephew, who was an attorney in Richmond, Kentucky.

Q. I believe Mr. Fred Stilz was your uncle, was he not?

A. That is correct.

Q. And before you became president of the bank, he was president of the bank for many years, wasn't he?

A. Yes, sir, he was.

Q. When he passed away, did the bank handle his estate?

A. No, sir. His widow served as his executor.

Q. In the case of your mother's estate, did the bank [188] administer your mother's estate?

A. She died intestate, Mr. Odear. I was appointed as administrator.

Q. The bank, then, was not appointed?

A. No, sir.

Q. You didn't have the bank appointed?

A. No, sir.

Q. Mr. Stilz, is your Trust Department a profitable operation or not?

A. In the past several years it has been. We do not run a strict cost accounting against it.

Q. In other words, you don't allot to it the rent for space or facilities furnished or anything of that kind?

A. No, sir, we do not.

Q. Leaving out the various charges that might be allocated to them under a proper cost accounting system, it has been profitable?

A. It has been in the past few years, yes, sir.

Q. Do you know what it would show if a proper cost accounting or allocation would be made? Would it still be profitable or not?

A. I imagine it would be very close to a break-even proposition.

Q. Your bank has a building of its own, does it not, which it operates?

[189] A. Yes, we have several buildings—one downtown building you are referring to, I suppose.

Q. I am referring now to your downtown building.

A. Yes, sir.

Q. Do you have office space for rent in that building?

A. We do.

Q. Have you ever made it a condition of renting to any of the tenants that they make their deposit in your bank or do business with your bank?

A. No, sir. We have attempted to, in meeting the tenants, influence them to do their business with us. We have never made it a condition.

Q. Does the Trust Department have real estate entrusted to it and the management of real estate entrusted to it?

A. Just a little.

Q. Some. Have you ever tried to put any pressure on the persons to whom you rent that real estate to do business with your bank?

A. No, sir.

[190] Q. Do you know of any instances where the First Security National Bank has done anything of that kind?

A. I do not.

Q. As a matter of fact, to attempt to operate properties left to you in trust for the benefit of the trustee by trying to coerce the tenants to deposit in your bank would be a breach of your fiduciary capacity, wouldn't it?

A. I would think it would be, yes. If that were the primary attempt, yes.

Q. Now, with reference to competition between commercial banks, Mr. Stilz, there are various regulations and laws of the Federal Government and of the State which limit in some respects the competition which you can offer to other banks; is that not correct?

A. We are under certain regulations with respect to the operation of the bank; sort of a public trust, I would say, to protect the depositors and stockholders' money.

Q. For example, in the field of obtaining demand deposits, there is keen competition between banks for obtaining demand deposits, isn't there, Mr. Stilz?

A. There is, yes.

Q. Do you know that historically up until a regulation was put in force to prevent it that banks offered interest on demand deposits?

[191] A. I have heard that they did.

Q. At the present time, however, a bank cannot compete with another bank for a demand deposit by offering interest on the account, can they?

A. Not in that manner, no, sir.

Q. There is a federal regulation which prevents that, isn't that correct?

A. That is correct.

Q. Since you cannot offer that inducement to a customer to deposit his demand deposit in your bank, how do you compete with each other in trying to obtain those demand deposits?

A. Through advertising, personal solicitation, through any contact you might have through your bank's officers and directors with the prospective customer.

Q. Is the matter of service which you offer one of the fields in which you compete for demand deposits?

A. Yes, sir.

Q. In that respect do you feel that your bank can offer services equal to the services offered to the public by The First Security Bank in attempting to obtain demand deposits?

A. Mr. Odear, we hope that we can. One thing that will happen as a result of this merger is that the largest [192] bank in Lexington will be allowed a branch in our back door which I don't believe under any stretch of the imagination the regulating authorities would allow us to have.

Q. You are now referring to the old principal office of the Security Trust Company?

A. Yes, sir. I think banks are in strong competition for branch locations. That is another field I didn't mention.

Q. It is about the same distance from you as the Citizens Union, isn't it?

A. It is a little closer than that.

Q. A few feet closer?

A. I would say, yes. It is one block away.

Q. The Second National, of course, is very much closer and at your rear door, isn't it?

A. And the branch of the First Security will be that much closer to the Second National, yes, sir.

Q. But it will be at the same place that there has always been a strong commercial bank, namely, The Security Trust Company?

A. They have been in the commercial field, I think, about ten years, or something like that. But now it is a bank four and a half times our size with that branch that close to us, two downtown offices. I don't know what effect [193] that will have on our competing favorably. That is something only the future will tell.

Q. You have no knowledge of how that will affect you?

A. No, sir, I don't. I wouldn't think it would be very favorable in my opinion.

Q. Well, now, getting back to the type of service that you can offer, your bank does offer as good service to its customers

as any other bank in town in the field of demand deposits, doesn't it?

A. We think so, yes, sir.

Q. That was true before the merger and is still true since the merger, isn't it?

A. We think so.

Q. Now, in the field of advertising, have you made any study as to the effectiveness of advertising for attracting demand deposits to your bank?

A. I have not made a study as such. I am called upon quite often by salesmen from the different advertising media, and they present figures. Mr. ——s' boys have a bunch of figures at hand.

Q. What is your opinion about it based upon your experience?

A. I think there is no question but what advertising [194] is important to business, yes.

Q. Do you feel that your advertising is adequate for a community of this size?

A. The amount that we spend advertising?

Q. Yes.

A. Mr. Odear, I know of no rule of thumb on that. We naturally think that we do enough. I don't know whether we do or not.

Q. I see. Now, you said that you competed in service and in advertising and in personal contacts, I believe.

A. Yes, sir.

Q. Who generally makes personal contacts?

A. Usually your officers, executive officers of the bank, and in many instances your Directors.

Q. Do you feel that the officers and Directors of your bank are as qualified and as capable of making these contacts as those of The First Security or not?

A. I feel that they are certainly as competent and as qualified. I do not know if they have as many contacts as the officers and Directors of The First Security Bank.

Q. You don't know about that?

A. I don't know about that, no.

Q. Now, in the field of time deposits, you are also, of course,

in competition with the other commercial banks [195] in that field?

A. Yes.

Q. Attracting time deposits to your bank?

A. Yes, sir.

Q. Are there any regulations which limit the manner in which you can compete in that field?

A. With respect to paying interest?

Q. Yes.

A. Yes, sir, there are.

Q. There is a ceiling of interest which is the maximum you can pay to attract time deposits to your bank, isn't there?

A. There is, yes.

Q. What is the practice of banks in Lexington with reference to how much they pay for that?

A. In the past several years it has been the practice to pay the maximum amount allowed by law. Some years back, I would say, four or five years back, some of the Lexington banks paid the maximum allowed by law up to a certain amount, we will say twenty-five hundred dollars, and then dropped down on amounts over that.

Q. And at the present time they are all paying the maximum, aren't they?

A. As far as I know, yes. They are advertising as [196] such, yes.

Q. Do you know how many times the maximum interest rate on time deposits has been increased in recent years?

A. Once or twice. I am not sure.

Q. Do you know which was the first bank—

A. You mean locally?

Q. Yes.

A. Oh, I thought you meant by the regulatory agencies.

Q. Well, first by the regulatory agencies?

A. I think once or twice.

Q. Each time in due course the Lexington banks have come to the maximum, haven't they?

A. That has been the outcome, yes.

Q. Do you know which bank is Lexington first announced each time that it would pay the maximum rate?

A. I don't know for sure about each time. The Central Bank has been a factor in the increase in the interest rates on savings. I imagine that is what you are driving at, sir.

Q. That is right.

You recall on the last increase they were the first one?

A. They were the first one in the newspaper, yes.

[197] Q. And after that, the other banks so announced?

A. Yes.

Q. At that time Central Bank was the next to the smallest bank in Lexington, wasn't it?

A. I believe that is correct, yes.

Q. Now, with reference to the making of loans to individuals, is there a regulation which prescribes the maximum interest which can be charged?

A. There is by State statute, yes.

Q. Effective on all banks?

A. Yes.

Q. Now, as a matter of practicality, is there a floor under which banks would not lend money to individuals under certain circumstances?

A. I would think there would be, for good business reasons.

Q. Do you know what the so-called prime interest rate means?

A. Yes, sir.

Q. Could you explain that to us?

A. Prime interest rate is the interest rate that banks are required to pay the Federal Reserve Bank to borrow money.

Q. And does that have any effect on the interest [198] rates.

What you referred to there, Mr. Stilz, was really the rediscount rate?

A. Yes. The prime rate is the rate that money is offered to your real large corporations on their paper.

Q. Ordinarily by New York banks?

A. That is usually set by the big city banks, yes. It is based on the rediscount rate.

Q. Does either the rediscount rate or the prime interest rate have any effect on fixing the minimum at which Lexington banks would lend money to the customers under ordinary circumstances?

A. It probably does. It doesn't have to.

Q. But in actual banking operations it does, doesn't it?

A. It probably does as a practical matter.

Q. As a matter of sound banking would you say that it had that effect?

A. I would think so.

Q. So that if you operate a bank on a sound basis, there is a legal maximum and a practical minimum for the lending of funds, isn't there?

A. I suppose so, yes.

Q. That, of course, affects competition in that [199] field, doesn't it?

A. Yes, sir.

Q. Are there any other regulations that you know of which limit the manner in which banks can compete with each other?

A. In legal limits of lending? Is that what you refer to?

Q. Yes. That is one of them.

A. There are regulations, yes.

Q. There are various regulations which do limit that, that competition?

A. In the field of lending, yes, sir, there are, and of paying interest on savings and not paying it on demand deposits.

Q. In addition to the desirability of competition between banks, Mr. Stilz, as a matter of good banking practices, does the element of the soundness of the bank enter into the picture?

A. Oh, I think very definitely it does, yes.

Q. As a matter of fact, the all-out and unlimited competition has been regulated in many respects in banking so as to provide for the primary purpose of soundness of banking; isn't that true?

A. That is correct.

[200] Q. Now, I presume from your direct testimony, Mr. Stilz, that you feel that the bigness alone of the merged bank might place the other banks in Lexington at a disadvantage in a competitive way; is that true?

A. I think so, yes, sir.

Q. The new merged bank will have slightly in excess of fifty percent of the banking assets of the community at the beginning, would it not?

A. Those are the figures I have seen, yes.

Q. Are you familiar with the fact that back in 1942 that the First National Bank at that time had more, a larger percentage, of the banking assets of Lexington than the merged bank now has?

A. I am not aware of those figures. I assume they are correct.

Q. Would you expect from having had that percentage at that time that it would then have placed the other banks at a competitive disadvantage?

A. It has been rough, I will tell you. I will answer you like I answered Mr. Park on my deposition; we evidently have done a pretty good job of competing. And now they are going to get it all back in one swoop.

Q. In spite of the fact that it has been rough, that the competition has been rough, in the approximately [201] eighteen years that have elapsed since that time the experience has been that the First National Bank went down from 53 percent or more of the assets of the community to approximately 40 percent, while all of the other banks, or at least your bank, went up substantially in its percentage of the assets, didn't it?

A. That is correct.

In that time span, you had The Security Trust Company coming from a non-commercial bank into the commercial bank field, and came in very strong and very successfully. The Central Exchange Bank was converted from a strictly industrial bank to a commercial bank, and it has been very successful in obtaining deposits.

Q. In other words, in spite of the fact that the largest bank in Lexington was fluctuating during that period from in excess of 53 percent of the assets down to 40 percent of the assets, these two new banking operations were able to start in, survive the competition, and become strong?

A. They did, yes, sir.

Q. Do you know what happened to your bank percentagewise during that period of time?

A. We have grown.

Q. Do you know to what extent?

[202] A. I don't know the percentage figures, no, sir.

Q. You have grown substantially in dollar volume, have you not, Mr. Stilz?

A. Yes, sir. We have been in a very tremendous economic period, and we have enjoyed a good growth, as have all the other banks.

Q. Would you say you have gotten your fair share of the business?

A. I don't know whether you ever think you have gotten your fair share or not, Mr. Odear. We have gotten some.

Q. At any rate, you have done very well, haven't you?

A. We think that we have, yes, sir.

Q. Now, I would like to compare your experience since the merger with the years immediately prior to the merger of the First National and Security Trust. You have operated now for almost a year since the merger took place, have you not?

A. Yes, sir.

Q. And I presume you don't have any figures for up to this time of this year, but you do have figures up to the 1st of January, 1962 for the operation of the bank, do you not?

[203] A. Yes, sir.

Q. Did you grow during the year 1961 during the ten months of which the merged bank was in operation as a merged bank?

A. Dollarwise we did. We enjoyed, as you know, a very high tobacco market in this area this year, and the deposits from that were of a substantial nature.

Q. What about percentagewise? You also grew percentagewise, didn't you?

A. I believe we did, yes sir.

Q. And you grew more percentagewise during that year than you did in any of the three or four preceding years, didn't you?

A. I couldn't testify to that, Mr. Odear. I am not sure.

Q. You don't recall?

A. I couldn't testify to that.

Q. Mr. Stilz, approximately how many tobacco warehouse accounts are there in Lexington and Fayette County to be divided up?

A. I think there are approximately thirty.

Q. And how many of those does your bank enjoy?

A. We have ten or twelve. I have forgotten exactly how many.

[204] Q. Out of the thirty?

A. Yes, sir.

Q. And have you lost any of them to the new bank by reason of this merger?

A. Not to my knowledge.

Mr. Odear. Your Honor, could we have a few minutes at this time?

The Court. Yes.

We will take a ten-minute recess.

(Whereupon, a ten-minute recess was taken.)

[205] By Mr. Odear:

Q. Mr. Stilz, are you familiar with the fact that historically the Security Trust Company was organized for the purpose of handling trust business and trust accounts principally for other banks?

A. I have been told that, yes, sir.

Q. You do know, as a matter of fact, that for a long period of time the Security Trust Company had practically all of that business, did they not?

A. They were the dominant company in the field, yes, sir, by far.

Q. By far?

A. Yes, sir.

Q. As a matter of fact, would you say they had in excess of 95 percent of the corporate trust business of Fayette County for many years?

A. I would guess that. I don't know, Mr. Odear.

Q. In spite of that dominance which they at one time had in that field, has another bank in Lexington been able to establish a trust department and make it grow to a substantial and sizeable amount in business?

A. I think The First National Bank has been very successful in their efforts to obtain trust business, yes, sir.

[206] Q. Are you familiar with the fact that approximately 20 years ago they opened up a full-time trust department with a full-time trust officer?

A. I am not familiar with the time, but I know they have for a number of years.

Q. At any rate, you are familiar with the fact that for the last several years they have put forward a special effort in that field, are you not?

A. I think they have, yes.

Q. Have you observed that they have obtained results against the competition of the Security Trust Company in that field?

A. They seem to have, yes, sir. In my opinion that has come as a result of their preponderance of the commercial business in the area.

Q. But it has been possible for them to do that.

A. It has.

Q. Has your bank ever had a full-time trust officer?

A. No, sir, not as such. I should say not to my knowledge.

Q. Not within the time that you have been with them?

A. That is correct.

Q. Getting back to the question of the holding of the stock of The Lexington Herald-Leader Company in the Trust [207] Department, first of The Security Trust Company and then of The First-Security National Bank, it is true that that stock was held by the Trust Department of the Security Trust Company for some time prior to the merger, wasn't it?

A. That is my understanding.

Q. So that the merger has not affected the fact that one of your competitor banks held and is continuing to hold that stock, has it?

A. It has affected it from this standpoint, that from a bank of $17 million or $18 million in assets, that paper is now held by a bank of some $85 million to $90 million in assets.

Q. But you were in competition with the Security Trust Company, weren't you?

A. Yes, sir.

Q. And the other commercial banks in Lexington were, prior to the merger?

A. We were.

Q. And the only difference is the size of the bank which now holds the stock in this trust account.

A. That—plus the fact that Mr. Mahoney is now under the same roof with the other two directors of the company.

Q. In other words, prior to the merger, two of the three trustees were connected with the Security Trust [208] Company.

A. With competing banks, yes, sir—with competing banks.

Q. Mr. Mohney, who is an attorney and director of First National, is one of the trustees?

A. That is my understanding.

Q. It has been called to my attention, Mr. Stilz, that the correct arrangement is that the bank, Security Trust Company formerly and now the First-Security National, is the trustee.

A. That is correct.

Q. And it is directed to vote its stock for those three gentlemen that you named as directors.

A. That is my understanding, yes, sir.

Q. Do you recall when an effort was made jointly by your bank and The First National Bank to have the median stip removed from the middle of the street between your branch offices in Chevy Chase?

A. Do I recall it?

Q. Yes.

A. Yes, sir, I do.

Q. Both your bank and The First National sought actively before the Zoning Board to get that done, didn't they—First-Security, I mean, the merger?

[209] A. Yes, before the Board of City Commissioners, we appeared.

Q. And before the Zoning Board?

A. No, sir, not before the Zoning Board.

Q. Just before the City Commissioners?

A. That's correct.

Q. Do you recall the Lexington Herald-Leader coming out with an editorial in that regard?

A. I believe that they did.

Q. As a matter of fact, it was adverse to what The First-Security National Bank wanted to accomplish, wasn't it?

A. That is my recollection, yes, sir.

Q. So in that case the ownership of the stock didn't operate in the way you have indicated, did it?

A. Not in that instance. I have not seen an adverse editorial on this merger yet.

Q. That's right. Mr. Stilz, with reference to this merger, I believe you gave your——

A. I might add, Mr. Odear, in that editorial regarding the median stip, I didn't recall that our bank was even mentioned in the editorial—whether we were interested one way or the other.

Q. But you were actually interested.

A. We were, yes, sir.

[210] Q. You gave your deposition in this case since this merger took place, haven't you?

A. Yes, sir.

Q. I believe you testified in substance at that time that, up until then, you had observed no adverse effect upon any of your banking operations by reason of this merger.

A. I have not.

Q. Is that still true up to the present time?

A. As far as I know, yes, sir. About the only adverse thing I have observed, I had to send a check back one day that was endorsed First-Security, and I couldn't get either bank to take it back.

I was able, by calling Mr. Miles, to get it taken back.

Q. You were finally successful?

A. Yes, sir.

Q. In other words, the service wasn't as good after the merger as it was before the merger?

A. I don't know about the service.

Q. How many branches does your bank operate in Lexington?

A. Two.

Q. Does each of your branches do a full commercial banking business?

A. In the branches?

[211] Q. Yes, sir.

A. They do.

Q. In other words, they can make loans; they have safety deposit boxes; and they furnish the various services that your main bank furnishes?

A. Yes, sir. Their lending authority is limited up to certain amounts.

Q. If someone wants to borrow more than that, they can telephone in to you or handle it some quick way?

A. Yes, sir.

Q. Mr. Stilz, I believe you said that one of the things that caused you some apprehension about the merger was that the merged bank might have more money to spend in the hiring of trained personnel or technicians or people of that kind. Was that the substance of your testimony?

A. That is correct—that it would make it much more difficult for us to compete against.

Q. In that regard, what benefit could be obtained from hiring such personnel, trained technicians, and people of that kind?

A. I would say that it would give better service to the customer. I would have to admit that. That may be a short-sighted viewpoint, because I can see if they got such a preponderance of the trust business where competition might [212] just fold up as far as not being profitable.

So then I don't know whether that is doing the customer a better service or not.

Q. You don't object to the public in general getting better service, do you?

A. No, sir, I do not.

Mr. ODEAR. I think that is all.

Redirect examination by Mr. SPAETH:

Q. Mr. Stilz, you have stated, I believe, that advertising and personal solicitation by officers of commercial banks are important factors in competing for demand deposits.

A. Yes, sir.

Q. If the services of one bank are as good as those of another, does that make advertising a more important factor in that competition?

A. I would say it would make advertising and solicitation more important, yes, sir.

Q. Can your bank spend as much on advertising as can a larger institution?

A. No, sir.

Q. Is the size of a bank a factor in influencing the securing of demand deposits?

A. In many instances it is, in my opinion. For example, [213] persons or businesses coming into this community who are new and not aware of the past history of banks particularly in this area have a tendency to look in the national directories and find that here is a bank with—well, take, for example, The First National Bank before the merger, which had some 40 percent of the deposits and of the loan business in this area.

How many of those people realize that that is a combination of eleven or twelve banks that has come about as a result of consolidation, mergers, or take-overs? Those people don't bother to find out those facts. They think, well, here is a bank that has got this much of the business; it must be a tremendous institution.

Q. Would advertising the fact that a larger bank is three times the size of that of its nearest competitor be an important factor in securing demand deposits?

A. In my opinion it would, and evidently the First National for years has used in its advertising, "Lexington's Oldest and Largest Bank." They evidently think it is very important.

Q. Would statements to that effect, and personal solicitation by officers of that bank, have the same competitive effect?

A. I would think so.

[214] Q. Mr. Stilz, do you know what the ceiling is on rates allowed by the state on loans by banks?

A. Are you speaking with respect to interest rates?

Q. Interest rates.

A. What type of loan?

Q. I believe Mr. Odear had reference to loans to individuals.

A. We have a 6 percent usury law in this state. For corporations, I believe the present law is you can charge up to 8 percent.

Q. Do you know what the current prime rate is?

A. Nationally?

Q. Yes.

A. Four and a half percent.

Q. So I take it, then, that in the case of individuals the competition between banks on interest rates would range between 4.5 and 6 percent in this area.

A. The interest rates in this area, I would say, are governed more by supply and demand than by the prime rate or the maximum rate.

Q. But the prime rate is, as you have testified, somewhat of a floor.

A. I would say it is a criterion, yes.

Q. But there is a range of competition for loans with [215] regard to interest rates, is there not?

A. Yes, there is.

Q. In 1942, Mr. Stilz, when First National had, I believe you testified, somewhat over 50 percent of the assets of commercial banks in Fayette County——

A. I do not testify to that fact. That figure was given to me by Mr. Odear.

Q. At that time was Security Trust the largest trust institution?

A. That is my understanding.

Q. And now First-Security is both the largest commercial bank and the largest trust institution?

A. By far.

Q. Does that constitute an important difference in competitive conditions between now and 1942?

A. I think that it does, yes.

Q. Mr. Stilz, do you think that the full potential effects of this merger have been felt since the time the merger has been in effect?

A. No, I don't think so. I think they have been most careful in observing the orders of the Court as far as transacting their business separately, as much as humanly possible.

I don't believe that they have as yet concentrated their [216] power, if they so desire.

Mr. SPAETH. That is all.

Recross-examination by Mr. ODEAR:

Q. Mr. Stilz, you say that out-of-town concerns coming into Lexington are apt to go to the largest bank for their business.

A. I would say it gives them a very desirable edge, Mr. Odear.

Q. The First National was the largest bank in Lexington prior to the merger, wasn't it?

A. It was.

Q. So that it could truthfully advertise both before and after the merger that it was the oldest and largest institution?

A. It sure could. I didn't mean to infer that they were misleading in their advertising at all.

Q. I mean the advantage of being——

A. I merely testified—they asked me if I thought the largest was an advantage advertising-wise; and I said I thought so, and evidently First National must think so, they use it so much.

Q. And they had that advantage before the merger and they still have that advantage?

[217] A. It has been a little larger now, yes, sir.

Q. But they don't go into that in their advertising, do they?

A. No; they say "the largest."

Q. The question of the thing that fixes interest rates in the City of Lexington, in this community you said it was principally the law of supply and demand, I believe, rather than any of these other factors.

A. I would say that is a big factor, yes, sir.

Q. The supply has not been affected by the merger, has it, Mr. Stilz? In other words, approximately the same amount of funds are available for lending now as there were before?

A. Dollar-wise, the lending ability has been decreased in the community.

Q. The limits. I am talking about the supply. The amount of money available for lending is approximately the same as it was before.

A. Yes, sir.

Q. In other words, that is not affected by the merger.

A. No, sir; but the lending limits have been decreased in the community.

Q. The demand has not, of course, been affected by the merger, has it?

A. Not that I know of.

[218] Q. So the law of supply and demand which affects the interest rates has not really been affected by the merger, has it?

A. So far as I know, it hasn't.

Q. Mr. Stilz, while there are people, as you have testified—when I say people, I mean corporations, partnerships and in-

dividuals—who prefer to do business with the largest bank, aren't there also to your experience people who prefer to do business with a smaller bank?

A. Some individuals do, yes, sir.

Q. As a matter of fact, while The First National advertised "oldest and largest," the Central Bank advertises "Large enough to do a good job, but still small enough to be friendly."

A. "To know you"—or something, yes, sir.

Q. As a result of their efforts in competition, they have done right well percentage-wise compared to The First National Bank and First-Security, haven't they?

A. According to their published statements, yes, sir.

Q. Of course you have no reason to doubt the published statements?

A. Oh, I don't doubt the veracity of their published statements. I mean that was my only method of knowing.

Mr. ODEAR. That is all. Thank you.

[219] The COURT. You are excused, Mr. Stilz.

(Witness was excused.)

Mr. WILLIAMS. Your Honor, we have one more witness we plan to call. We can start with him now, or, if you like, we can adjourn for lunch and begin this afternoon.

The COURT. It is a little early to stop for lunch. Let's go ahead.

Mr. MITCHELL. The Government calls as its next witness, Mr. Robert Layman. Take the stand, please. Whereupon,

ROBERT LAYMAN was called as a witness, and, after being first duly sworn, was examined and testified as follows:

The CLERK. Take the stand, please. The witness, your Honor, is Robert Layman.

The COURT. How do you spell that?

The WITNESS. L-a-y-m-a-n.

Direct examination By Mr. MITCHELL:

Q. What is your address, Mr. Layman?

A. 1608 Bon Air, Lexington, Kentucky.

Q. What is your occupation?

A. President of The Central Bank, Lexington, Kentucky.

Mr. ODEAR. We can't hear you.

[220] The WITNESS. 1608 Bon Air, Lexington, Kentucky. President of The Central Bank, Lexington, Kentucky.

Mr. ODEAR. I knew who he was, but I didn't get the last answer.

By Mr. MITCHELL:

Q. How long have you held that position?

A. 1959.

Q. What did you do before that?

A. Prior to that I was executive vice president and chief executive officer of the Bank of Oak Ridge, Oak Ridge, Tennessee. From 1954 to 1956 I was executive vice president of The National Bank of Paris, Kentucky; and from 1950, vice president of The Central Bank, Lexington, Kentucky.

Q. What types of banking services are provided by The Central Bank?

A. Well, all the commercial banking services that a commercial bank provides. I think the emphasis is on receiving deposits, making loans, and all the usual functions of a bank.

Q. What percentage of the customers of The Central Bank are located in Fayette County?

A. I would say most of them. I would say well over 95 percent.

Q. Who does The Central Bank compete with?

[221] A. All the commercial banks in Lexington—First Security, Bank of Commerce, Second National, Citizens.

Q. How do the commercial banks in Fayette County compete with each other?

A. Well, we compete on these different functions I talked about a minute ago. We compete for demand deposits, we compete for good loans, we compete to get customers in all functions of the bank.

Q. By what metohds do you compete?

A. As methods to attract the customers, we use advertising; we use personal contact; we try and develop the services of the bank, not only technically but with the employees within and the attitude of the community toward the bank through not only attracting them through these outside media bringing them in, but by servicing them when we get them there and keeping them.

Q. Is there any competition in interest rates?

A. I would think there always is competition because that is good business practice.

Q. What is the total of deposits in The Central Bank?

A. About $14 million.

Q. How much of that total is demand deposits?

A. About $10.5 million.

Q. How are demand deposits generally withdrawn?

[222] A. By check.

Q. With the exception of large national concerns who have offices here in Fayette County, what financial institutions can small or medium-sized businessmen who are located in Fayette County turn to for short-term business loans?

A. Would you repeat that again, please?

(Reporter read the last question.)

The WITNESS. The only place they have to go is in Lexington because that is where they are known, and a good portion of the credit analysis is on the individual—how well you know him, his background, his character.

If a man should go to another city, my experience is that he would be referred back to the town from which he came.

By Mr. MITCHELL:

Q. Are there any institutions other than commercial banks in Fayette County to which he could turn for this type of short-term business loan?

A. Not that I know of.

Q. Does your bank maintain deposits in correspondent banks in other cities?

A. Yes, we do.

Q. What cities are those?

A. Louisville, Cincinnati, Chicago, New York, and [223] Nashville.

Q. Would you name your correspondent banks in Louisville and Cincinnati?

A. Well, we have most of the large banks in Louisville. Our principal correspondent is Louisville Trust, and our principal correspondent in Cincinnati is First National.

Q. In what way do you place or withdraw deposits in your correspondent banks?

A. By letter.

Q. Do your correspondent banks actively solicit business in Fayette County?

A. No. I don't know that they do. I don't believe they do. In fact, I am sure they don't in competition with us.

Q. In your experience, is it general practice in banking in Kentucky that correspondent banks do not compete with those banks whose accounts they hold?

A. I am sure they don't. I think both from the ethics of it, and I don't think it would be good business if they competed.

[224] Q. Would you keep an account with a correspondent bank in Louisville if you found that it was actively soliciting your customers in this area?

A. No.

Q. Does the Central Bank operate a trust department?

A. Yes. We have had one for about two months now.

Q. Why did you establish a trust department?

A. Well, to be competitive; we need everything we can to be competitive. As I said a while ago—you were talking about one phase; in all phases we need this. I would say it is mostly a defensive method, because we did not have a trust department. We have customers, and when they need those services, they have to go elsewhere, in Lexington.

I think they would be attracted to this large bank. And I think that primarily it was a defensive method to retain our customers.

Q. How long do you think it will take you to make the trust department in your bank a profitable operation?

A. I don't know. I imagine it will take a long time. But, as I said a minute ago, we offer this to retain what we have.

Q. What do you feel is the best source for potential customers for your trust department?

[225] A. Our own customers.

Q. You feel there is a relation between the trust department and the commercial department of a bank?

A. Yes, I do definitely, because to retain our customers, we need to have this, because if they have to go to another source for this particular service, I think they could be courted there and it would be another thing in competition and make us work that much harder to retain what we have.

Q. What effect will the fact that First Security has about 80 percent of the trust accounts and about 94 percent of the

total trust assets held by commercial banks have on your ability to compete for trust business?

A. Well, we have been competing with bigness for a long time. And we recognize the difficulty of doing that. And I think it would be difficult.

Q. Do you think it will make it more difficult than it might have been were you competing for that business against First National and Security Trust as separate institutions whereby one had approximately fifty percent of the business and the other had approximately forty-five percent of the business?

A. I think it is always easier when the small man has two big men competing against each other to take some [226] of that, rather than having one great big man and trying to take part of it.

Q. What types of loans are made by savings and loan associations in Fayette County?

A. I understand that they make first mortgage loans on homes, and they are long-term mortgages.

Q. Does the Central Bank actively seek that type of loan?

A. We cannot. Because of the structure of our deposits and having to have this liquidity for demand deposits, we can't go that route.

Q. What is the average term of the real estate loans which the bank does make?

A. Well, I can't give you the average, but I can tell you some of the terms. We will go up to five years.

Q. Generally no more than that?

A. That is right.

Q. Do you consider your bank to be in competition with savings and loan associations in making loans?

A. Not in making loans.

Q. What type of loans are made by insurance companies in Fayette County?

A. Well, by the structure of the premium deposit, I will call it to compare it with bank deposits, that is long- [227] term money; and, therefore, they can go for long-term loans, first mortgages on farm lands, commercial properties, and homes, which, because of the nature of our deposits, we cannot go.

Q. Does the Central Bank actively seek that type of loan?

A. We could not take care of it, so we don't.

Q. Do you consider your bank to be in competition with insurance companies in making loans?

A. No.

Q. What type of loans are made by small loan companies in Fayette County?

A. Well, I would say that they have a very high risk market. And to take care of the small loan company, they have a rate structure that takes care of this risk. And they are not the same market that we would solicit.

Q. Is the interest rate charged by small loan companies in Fayette County much greater than that which commercial banks can charge?

A. I would say yes.

Q. Do you consider your bank to be in competition with small loan companies generally in making loans?

A. No. Because of the type of loans that are made.

Q. Mr. Layman, does the Central Bank advertise?

[228] A. Yes.

Q. What form does that take?

A. Well, stuffers, direct mail, signs, radio, newspaper.

Q. Is newspaper advertising an important part of your program?

A. I would say it is one of the most important parts, yes.

Q. In what newspapers do you advertise?

A. The Lexington Herald and the Lexington Leader.

Q. Do you know who owns the Lexington Herald-Leader?

A. Well, my understanding is that it is the trust department of First Security.

Q. Do you feel this fact gives First Security a competitive advantage over your bank?

A. Yes, I do. I also understand the power of the press. And I can appreciate the value of having this power, because at the Bank at Oak Ridge on my Board of Directors we had a publisher. And I would say that it is of great help in competing with another firm.

Q. Do you feel that the size of First Security as compared with the size of the Central Bank, the fact that it is about five times as large as your bank, places your bank at a competitive disadvantage?

[229] The WITNESS. Would you go through that question again?

(The question was read by the reporter.)

The WITNESS. Yes.

By Mr. MITCHELL:

Q. In what ways?

A. Well, we were just talking about advertising. We could take all media of advertising, but say we do take the newspaper; suppose the other banks are almost of comparable size and we had the same number of dollars: say the large bank has the same number of dollars as this group of small banks. Well, with large ad, the same amount of money, you can dominate the newspaper, where if each of the smaller banks had a small ad, you could be placed around and you will not dominate the newspaper in an ad.

And this is most difficult to overcome. And as I said, I have been through this some. And having been associated with a newspaper and appreciating the value of it, I know the value of news stories and editorials. I know the value of those.

I know the value of getting into community relations, because naturally if you have someone friendly in the newspaper, it is always good. And I appreciate that fact.

I believe you asked me about size?

[230] Q. Yes. Are there any other ways in which you feel your bank is at a competitive disadvantage?

A. I think so. This thing of numbers of people in an organization, the more people you have, the more people you can have in pure management or in staff positions. And I define staff positions from line positions, and the fact that line positions are where you do a specific job.

A staff position is where you lay out programs or take ideas such as your attorneys, your accountants, your tax or market analysts, or development of new business programs, and that sort of thing.

And talking about people, numbers of people, in a training program for instance, a large bank could probably have a training department where you could upgrade your people. This makes it very difficult in competition.

Now, the small bank will do these things, but it works the mechanism and the people so hard that it makes it difficult to do the external things to compete. And on this thing of people. I would like to get this thought across if I may. I think it is very important here.

In most industries, and in the banking industry particularly, you have three kinds of people. You have the worker who actually does the work, or the clerk you might call him. And you have what you might call a foreman [231] or leadman, whatever you want to call him. That man does work and he supervises people. Then you have pure management who just directs the efforts of other people.

In our bank we have about thirty-four people. We do not have pure management. Each person is a leadman.

He had to do certain functions as well as giving direction to this program. And to be competitive, we do these things, but it grinds us pretty hard to get them out. And it makes competition very difficult.

You were asking about size. We went through newspapers and people. And I think the public image from size is one of the most difficult things to compete against. And I would say those are the main ideas I have at this time about size.

The COURT. The Court will recess until 1:30.

(Whereupon, at 12:00 o'clock noon, the Court recessed until 1:30 o'clock p.m.)

[232] *Afternoon Session (1:30 p.m.)*

The COURT. You may proceed with Mr. Layman. Whereupon

Robert Layman resumed the stand, and testified further as follows:

Direct examination (resumed) by Mr. MITCHELL:

Q. Mr. Layman, in your opinion will the consolidation of First National and Security Trust into an institution nearly three times the size of its next competitor raise the possibility of other mergers by the four remaining banks in Lexington?

A. Yes. I think to compete in the factors we discussed so we can compete, I think it will be necessary to take whatever

route is necessary to be competitive. And that would probably be the most logical route.

Mr. MITCHELL. No further questions.

Cross-examination by Mr. OBEAR:

Q. Mr. Layman, how long have you been connected with The Central Bank this last time? As I understand it, you were connected with the Central Bank twice?

A. That is right.

[233] Q. Well, now, the last time, how long has it been?

A. A little over two years.

Q. That has been as president?

A. Yes.

Q. Before that you were with a bank at Oak Ridge?

A. That is right.

Q. What office did you hold there?

A. I was Executive Vice President and Chief Executive Officer.

Q. How many banks are there in Oak Ridge?

A. There is only one bank; but Hamilton National has a facility. They carry it on as a bank. And we tried to pull them into being a bank, but they made loans and carried on all the functions even though they were a facility.

Q. But you were with the bank and not the facility?

A. I was with the bank of Oak Ridge; and the Hamilton National Bank had a facility, but carried on all banking functions.

Q. How long were you there?

A. From 1956 until I came here.

Q. Approximately three years?

A. Yes, sir.

Q. And prior to that you were with the Bank in Paris, Kentucky?

[234] A. Yes, sir.

Q. What bank was that?

A. The National Bank of Paris, Kentucky. I was the Executive Vice President and Chief Executive Officer. The President was a physician there.

Q. How many banks were there in Paris?

A. Three.

Q. How long were you with the bank in Paris?

A. Almost three years. From 1954.

Q. Approximately three years?

A. Yes.

Q. Prior to that you were at the Central Bank, were you not?

A. I was vice president of the Central Bank, yes, sir.

Q. How long were you with the Central Bank here in Lexington on that occasion?

A. A little over three years. From 1950 until 1953.

Q. Before that, had you had previous banking experience?

A. No, I had not. I was in industrial management. I had been in organization work and had been in the life insurance business.

[235] Q. Were you in what people sometimes call publicity work?

A. In all my work, yes, sir. That is only one small phase. But we were talking about new business here; and I would say some people in banking don't think it is too important, but I would say that is one of the very important points in banking.

Q. My point is that one of the businesses you were engaged in was the publicity business, was it?

A. No, sir. I just said it was a facet of the business.

Q. Oh, I understand.

A. By "publicity" you mean newspaper advertising? What do you mean by "publicity"?

Q. Well, some phase of it. Advertising or personal publicity issued for someone?

A. No, never that. Always in development and organization work, principally in industrial management.

Q. I see.

So that your banking experience dates back approximately ten years?

A. From 1950, yes.

Q. Now, the Central Bank—were you familiar with the activities of the Central Bank prior to the time you first [236] went with it in 1950?

A. No, I was not.

Q. In 1950 what percentage, if you know, of the banking assets of Lexington were held by the Central Bank?

A. I don't know.

Q. Do you know what percentage is held now?

A. I don't know for sure, no.

Q. Your bank now——

A. If you will give me just a minute to think.

Q. All right.

A. You are going a little fast for me.

Q. I don't want to do that.

A. You are asking for percentages.

I would say about one-twelfth or one-fourteenth, whatever percentage that is.

Q. I see. But you don't know about back in 1950?

A. No, I don't.

Q. Are you familiar with the fact that in 1942 that The First National Bank and Trust Company at that time had more of the assets or a larger percentage of the assets of the banks of Lexington than the merged bank of First Security does now?

A. I have not seen the figures. I have heard that discussed.

[237] Q. Do you know at that time anything about the comparative size of the First National Bank and Trust Company and the Central Bank, or whatever its name was at that time?

A. At what time?

Q. 1942?

A. Well, in 1945 I know about the size of the Central Bank.

Q. All right. Give it to us in 1945, then.

A. From what I have seen, I think total assets were a little over half a million dollars on Central Bank.

Q. What are they now?

A. As of today?

Q. Yes.

A. Deposits are a little over fifteen million. I would say.

Q. The total resources?

A. That is what I say, total assets.

Q. What were they, if you know, as of the year-end of 1961 or the first of 1962?

A. A little over eighteen million.

Q. A little over eighteen million?

A. Yes.

Q. The Central Bank had increased its assets in [238] com-

petition with other banks over that period of time to the extent that you have just described?

A. You are not talking about daily averages? You are taking one——

Q. I am taking the year-end.

A. I believe to see the funds we have to invest, the really basic banking would really have to take daily averages. Most banks, if you take daily averages even on a week, I am sure First Security even over a weekend—I don't know, but a bank that size could fluctuate, I would say, two or three million dollars from, say, Tuesday to Thursday.

So, are we talking abount daily averages or one day's statement?

Q. I am talking about one day. We don't have the daily averages of all the banks.

A. All right. You are right on that, on one day.

Q. Now, who are the officers of the Central Bank, please, sir?

A. The Chairman of the Board is Garvice Kincaid. The president is Robert Layman. Executive Vice President is Charley Cool. Cashier Bud Smith. And Vice President Frank Trimbull. And Vice President Charles Hanks.

Q. Before we get to the Directors—we will come [239] to them later if you don't mind.

A. Yes, sir.

Q. Now, Mr. Garvice Kincaid, is he, also in addition to being Chairman of the Board, the principal stockholder of the Central Bank?

A. Yes. I don't know how many shares he has right off. But he is a principal stockholder.

Q. Would you say he is the dominant figure in your corporate setup?

A. When you say "dominant", what do you mean by the word "dominant"?

Q. I mean the person who exercises more influence?

A. I would say he is very influential, yes.

Q. There has been some mention of the ownership of newspaper stock by the Trust Department of the First Security Bank. Do you know how many newspapers Mr. Garvice Kincaid owns or controls?

A. No, I don't.

Q. It would be several, wouldn't it?

A. I don't think so.

Q. You don't think so?

A. No, I don't think so.

Q. Any?

A. I don't think so.

[240] Q. You don't think any?

A. I don't think he does, no.

Q. It has been stated that newspapers have power through the press.

A. Yes.

Q. Do you think that radio stations have any power?

A. When you are stating power, do you mean through advertising or through editorializing? You would have to clear it up for me.

Q. In any wise? Do they have any influence over the community?

A. Do you say influence or power now?

Q. Influence or power?

A. I would say they are an influencing factor in a community.

Q. Does Mr. Kincaid have any interest in any radio stations in Fayette County?

A. I understand he does.

Q. Which one is that?

A. WVLK.

Q. Does he have control of WVLK?

A. I really don't know.

Q. What about other radio stations in close proximity to Fayette County?

[241] A. You are talking about the influence of radio stations?

Maybe I am out of line, but isn't there a member of the Board of Directors of First National interested in a radio station?

Q. I don't know that I asked you that.

The COURT. Just answer the questions.

The WITNESS. All right, sir.

The COURT. First ask questions as to whether it concerns the competition among the banks. Then go ahead and develop it. There is no use wandering around.

Mr. ODEAR. Yes, sir.

By Mr. ODEAR:

Q. You have stated that the ownership or control of a newspaper in this county might affect the competition between banks.

A. Yes, sir, I think so.

Q. Do you think that the ownership of a radio station in this county might have the same effect?

A. No, I don't think it would have the same effect.

Q. Would it have any effect on competition?

A. I think it would have some effect.

Q. All right. Do you know whether or not Mr. Garvice Kincaid owns or controls any other radio stations in close [242] proximity to Fayette County?

A. I don't know whether he owns or controls any. I really don't.

Q. Is he interested in any?

A. Yes, he is.

Q. Which ones are they? That is, if you know?

A. I am not sure. I believe that he is interested in Frankfort. And I believe at Winchester. Those are the only two that I know of his interest in. I think that there has been some sales of radio stations. And I really don't know. But I believe—I am not sure about Winchester.

Q. It has been testified that the ownership or control of downtown rental property might have an influence on competition between banks.

A. Yes.

Q. Does Mr. Garvice Kincaid own or control a considerable amount of downtown real estate?

A. When you say considerable amount, he does have interest in—I don't know all of his personal properties, but the ones I know about I can talk to you about.

Q. Well, tell us which ones are in the prime business area of downtown Lexington that you do know about.

A. I don't know what he owns; but I think he owns a good part—I am not sure—of the Central Bank Building.

[243] Q. Yes.

A. And through his being an officer in Cardinal Corporation—and you are talking about downtown—there is the Phoenix Hotel and the LaFayette Hotel. These are the only two properties, unless you could help me a little bit, that I know about.

Q. What about properties on Short Street?

A. I really don't know.

Q. You are not familiar with that?

A. No, I am not.

Q. Let's put it this way to try to make this point briefly——

A. Yes, sir.

Q. Do you know of any individual in Lexington who owns as much or controls as much downtown business real property as Mr. Garvice Kincaid?

A. I don't think I would have any way of knowing that about individuals. I really don't.

Q. You don't know that much about the ownership of downtown real estate in Lexington?

A. By individuals I don't, no.

Q. By individuals or corporations?

A. No, sir, I don't.

Q. Is Mr. Garvice Kincaid an officer or a director in [244] any small loan institutions that operate in Lexington?

A. Yes.

Q. Which ones?

A. He is President of the Kentucky Finance.

Q. Now, you say that you are not—you say your bank is not in competition with any of those small loan institutions for loans?

A. Yes, sir.

Q. It has been testified that banks do have connections with those institutions, however, to satisfy their customers by possibly sending someone to them for loans when the bank doesn't handle them. Does that exist in this situation?

Mr. MITCHELL. I object, your Honor. I don't recall any testimony of that nature.

The COURT. You can ask the question without telling him what somebody else testified.

Mr. ODEAR. All right.

By Mr. ODEAR:

Q. Does that connection that Mr. Garvice Kincaid has with this small loan company—does your bank send business to him? Or do you know?

The WITNESS. Would you ask that again?

The COURT. Read the question.

[245] (The question was read by the reporter.)

The WITNESS. Not that I know of.

By Mr. ODEAR:

Q. Do you think it has any influence on competition between banks in Lexington for an officer, one of the chief officers of a bank, to have ownership or control of banks in surrounding towns?

The WITNESS. Repeat that, please.

By Mr. ODEAR:

Q. Do you think it has any effect on competition between banks in Lexington if one of the chief officers of one of the banks in Lexington has ownership or control of banks in towns surrounding or near Lexington?

A. No, I don't think it does.

Q. You don't think it has any connection?

A. You are talking about outside Fayette County?

Q. Yes.

A. No, I don't believe it does.

Q. Do any banks outside of Fayette County maintain accounts with your bank?

A. Yes.

Q. A few or many?

A. Well, it depends on what you mean by few or many.

Q. Can you tell us about how many?

[246] A. Are you going to ask me to name them? Is this confidential?

Q. I am just asking how many. I don't want to get into the names necessarily.

A. I would say probably six. They are very small courtesy accounts.

Q. They make funds available to you for lending and competing purposes, do they not?

A. If they were sizeable funds—I don't know whether I should get into the size of a customer's deposit. But they are not sizeable funds.

Q. You testified that the more money a bank has the more loans it can make and the better it can compete. Hasn't that been the substance of your testimony?

A. Yes, that is right.

Well, I would say to the extent they have deposits, yes.

Q. Is Mr. Garvice Kincaid—does he control banks in Fayette County—well, not in Fayette County, but in central Kentucky, or near to Fayette County, which are correspondents with your bank?

A. Well, let's separate ownership and control. I don't know how much he owns in these banks.

[247] The COURT. He didn't ask you how much. He said "or are controlled".

Answer the question.

The WITNESS. I don't know whether he owns or controls them, sir. I really don't.

Mr. ODEAR. All right.

By Mr. ODEAR:

Q. Let's limit it to banks in which he has an interest.

A. All right, sir.

Q. Do they maintain accounts with your bank and keep deposits with your bank?

A. I don't think all of them do. I think that there are five or six.

Q. That do?

A. Yes.

Q. Those are banks in which he has an interest that you know of?

A. Yes, sir.

Q. So that he does have an interest in more than five or six banks, but only that many of them keep accounts with you; is that correct?

A. Yes, sir.

Q. Mr. Layman, you say in your direct testimony that [248] you have been competing for business for some time, so that competition with a much larger bank is no new story to you, is it?

A. That is right.

Q. Wouldn't you say that the Central Bank has done very well in competing with much larger banks?

A. I would say it has done well. But I would say the effort necessary to do well has put us under a strain.

Q. What kind of a strain has it put you under?

A. Well, we mentioned this morning a number of people, staff, people that lay out programs, the number in a small bank; but I am competing personally; I have some of the top talent in this bank, some of the finest men in this type of work I have ever run into. We are pretty well matched there; many to one, shall I say. I was talking about being a leadman, doing the bank work, and competing under those circumstances; that is one way. We were talking about the size of ads this morning. We have had to cut corners many ways to wisely spend our money where we could be competitive. And we have been forced, with all the personnel this big bank has, to even get into a segment of this market, to get our name out, it has forced us to spend money to become known in ways that we could at least tap part of this market.

[249] Q. Speaking of the ads that you have had in the paper, I would like to show you an ad which appeared in The Lexington Herald on Thursday, July 27, 1961, and ask you if you caused that advertisement to be inserted in the paper.

A. Did you ask me a question?

Q. Yes. But you will have to wait to answer it until you can see the document.

(The newspaper article was shown to counsel for the Government, and then handed to the witness.)

By Mr. Odear:

Q. Did your bank cause that advertisement to be placed in the paper?

A. Yes, sir.

Q. What does it show with reference to the relative growth of your bank and the other banks in Lexington during the period covered by that advertisement?

A. Well, the lead on this ad says "a greater percent". So, when you are talking about——

Q. Read the whole thing.

A. You want me to read the ad?

The COURT. Yes.

The WITNESS. "Central Bank again leads in increased [250] deposits. A greater percent of increase than all other banks combined. For the period ended June 30, 1961 over the like period ended June 30, 1960, Central Bank again showed a greater percentage of increase in deposits than all other Lexington banks combined. More and more people are learning that our slogan 'Large enough to serve you, small enough to know you' is not only a slogan but a fact. Join the many others who are making the Central Bank their bank.

"Large enough to serve you, small enough to know you." The signature of the bank, Central Bank. "All deposits insured to $10,000 with the Federal Deposit Insurance Corporation. Below-the-line percentages were computed by and are on file at Central Advertising Agency using figures as shown in the published call reports of the banks shown."

Then by bar graphs, the first bank, The Bank of Commerce, plus 1.8: Central Bank, plus 14.4; These are percentages; Citizens Union, plus 3.5; First Security, plus 3.6; Second National, minus 2.1.

By Mr. ODEAR:

Q. Where did The First Security rank in that?

[251] A. Third.

Wait a minute. I read that wrong. It is second.

Q. Only your bank was ahead of it?

A. That is right. Percentagewise.

Q. Percentagewise?

A. Yes. This is based on percentage.

Q. That is based on percent?

A. Yes.

Q. Then, during that time you were competing against The First National and Security Trust Company until they merged, and then after they merged, against the merged bank, were you not?

A. That is right, sir.

Q. And against that competition, your bank increased percentagewise more than all the other banks put together; is that right?

A. Percentagewise we did. But when you start with a very small amount and increase percentagewise, dollarwise it doesn't tell the same story. And we were forced to do this to compete with something big, at least to get our name out there.

Mr. ODEAR. I would like to have that filed as a part of the witness' testimony, please, sir.

The CLERK. Exhibit Number 3 for the Defendant.

[252] (The above mentioned newspaper article was filed with the Clerk and marked Defendant's Exhibit Number 3.)

By Mr. ODEAR:

Q. I would like to now show you an advertisement of your bank as of January 25, 1962, representing, as I take it, the increase as shown by the year-end figures of the various banks.

I would like to ask you if your bank caused that advertisement to be placed in the paper.

(The newspaper article was shown to counsel for the Government, and then handed to the witness.)

A. Yes.

Q. What does it show as to the percentage of increase of the Central Bank for the year ending December 31, 1961, during ten months of which you competed against the merged bank?

A. Percentagewise it shows increase.

Q. Of how much?

A. 30.9 percent.

Q. Does it also show the percentage of increase of The First Security?

A. 13.4 percent, but not dollar increase.

Q. Now, Mr. Layman, where did The First Security Bank [253] fall percentagewise compared with the other banks after a year during which it had ten months of merged operation?

A. Fourth.

Q. Only one bank increased less than it did; isn't that right?

A. That is right.

But let me come back, if I may, to a point——

Q. Pardon me.

A. Pardon me.

Q. Is this in answer to something I have asked you?

A. I think so. But go ahead.

Q. I would like to ask you, if you will, to read that ad into the record, please.

A. "Thanks for the greatest percent of growth in deposits of any Lexington Bank during 1961. We wish to take this opportunity to thank you, the patrons of Central Bank, for making the rapid growth of our bank an outstanding symbol of service to the community. Central Bank has become a landmark of convenience to thousands of Lexingtonians, offering longer hours for your banking needs than any other bank in the city. Our courteous personnel are always ready to give you fast, efficient service. We invite everyone to take part in this growing service. All deposits insured to $10,000 by the Federal Deposit Insurance Corporation. [254] Large enough to serve you, small enough to know you. Central Bank and Trust Company, Corner Short and Upper Street. Percentages were computed by and are on file at Central Advertising Agency using figures as shown in the published call reports of the banks shown."

And as we started talking a while ago——

The COURT. Just a minute.

The WITNESS. All right, sir.

Then there are some bar graphs here. And the first one is Bank of Commerce, 18.6 increase: Central Bank, 13.9 increase; Citizens Union, 20.8 increase; First Security National, 13.4 increase; Second National, 10.7 increase.

The WITNESS. May I say this is for one——

The COURT. You are asked questions; that is all you are here for. You are a witness. You are not here to argue.

The WITNESS. All right.

Mr. ODEAR. I would like to have that filed as part of the witness' testimony.

The CLERK. Exhibit Number 4 for the Defendants.

(The above mentioned newspaper article was filed with the Clerk and marked Defendant's Exhibit Number 4.)

[255] By Mr. ODEAR:

Q. Mr. Layman, I now show you an advertisement published in The Lexington Leader on Wednesday, January 10, 1962. I will ask you if your bank caused that advertisement to be inserted in that paper?

A. For this ad, the big head, "Progress. Central Bank and Trust Company is proud to announce a $14,065,278.44 growth in only six years."

There is a comparative statement of condition.

Q. You don't need to read that. I just wanted to get the part that you read.

Mr. ODEAR. I would like to have that filed also as a part of the testimony.

The CLERK. Exhibit No. 5 for the Defendant.

(The above-mentioned newspaper advertisement was filed with the Clerk and marked Defendant's Exhibit No. 5.)

By Mr. ODEAR:

Q. I will now show you one more, and I am not going to clutter up the record with a whole bunch of these—just one more, please, sir. This is Wednesday, January 17, 1962. I will ask you if you recall that your bank caused that one to be published?

[256] The COURT. I think if you get the answer Yes and file the document in the record, it seems to me that is all that is necessary. We haven't got a jury here.

Mr. ODEAR. That is right. That is all I wanted to do.

The COURT. What is your answer?

A. Yes, sir, we ran this ad.

The COURT. Do you want to file it?

Mr. ODEAR. I would like to file it.

The CLERK. No. 6 for the Defendant.

(The above-mentioned newspaper advertisement was filed with the Clerk and marked Defendant's Exhibit No. 6.)

By Mr. ODEAR:

Q. Speaking of newspapers and their effect on competition and connections of banks with them, is the city editor of the Lexington Herald-Leader a member of your board of directors?

A. Is it the Herald, or the Herald-Leader?

Q. I don't know, sir. Do you? You know that Mr. Herman Phelps is on the board of directors?

A. Yes.

Q. He is the city editor of the Herald organization, [257] is he not?

A. Which?

Q. Would it be the Herald, sir?

A. I believe it is.

Q. Actually his title, I believe, is managing editor. Does that sound more like it?

A. I believe that is it.

Q. I notice in your advertisements that you call the attention of the public to the fact that there are some virtues to a bank being small, such as being "small enough to know you and small enough to take a personal interest in you," and things of that kind.

Do you feel that that is true?

A. Yes, I do.

Q. In the field of competing for savings accounts, there is a regulation which limits the amount of interest which you can pay on such accounts, is there not?

A. Yes, sir.

Q. Are you familiar with the fact that that legal limit has been raised a few times in recent years from time to time?

A. Yes.

Q. Is it a fact that your bank has been the first [258] one to make the raise to the new legal limit when the limit was raised on each occasion?

A. Yes. Being a small bank, this is another way to compete, and we felt like we were forced to.

Mr. ODEAR. With reference to that, I would like to identify and file one of the advertisements.

The WITNESS. Yes.

Mr. ODEAR. Let that be filed with the Clerk.

The CLERK. Exhibit No. 7 for the Defendant.

(The above-mentioned newspaper advertisement was filed with the Clerk and marked Defendant's Exhibit No. 7.)

By Mr. ODEAR:

Q. Mr. Layman, you have recently opened up a new Trust Department in your bank, have you not?

A. Yes, about two months.

Q. Approximately two months ago?

A. Yes.

Q. Do you anticipate that you will be able to develop a Trust Department at your bank?

A. We intend to.

Q. You have some business already, have you not?

A. Yes.

[259] Q. And that has been done in the face of the merged bank, has it not?

A. That was done as a defensive measure, because one of our prime accounts to be served—we—ask me the question again. I thought you asked me who was there.

Q. What I say is, you have opened up the new Trust Department with the anticipation of success in it, in spite of the fact that the merger has already taken place between The First National and Security Trust Company, have you not?

A. Yes. As I said this morning, to retain our customers, we feel like it is very necessary—as a defensive method—to retain our customers by having a Trust Department.

Q. Have you noticed any adverse effect on any of your banking operations by reason of the operation of merged banks since its merger?

A. Do you mean specific cases?

Q. Yes, sir.

A. I can't spell out a specific case at this time.

Q. It is your opinion and judgment as an expert that your bank can look forward to being able to compete with this new bank and take care of itself in the future, is it not?

A. Not as well as we could when they were not merged.

Q. You are right now in the process of building a new [260] addition on to your bank building, are you not?

A. Yes.

Q. You are doing that in anticipation of the needs of expansion, are you?

A. We were forced to do that as a defensive measure. We had to have a Trust Department and we had to have more space. That is another cost just like to compete against a big bank, we have had to spend excess money on these ads to become identified.

Q. You don't mean to tell the Court that all that new addition is going to be devoted solely to your Trust Department?

A. Hardly; but a portion of it.

Q. A portion of it only?

A. Yes.

Q. And the other facilities of your bank will go on over into the rest of that new building. Right?

A. But it is another way of competing for customers. We must have additional room to compete against this big bank.

Q. Are you making arrangements for a further addition to your bank in the way of downtown parking facilities?

A. Yes, we are. I might say that, to be competitive——

The COURT. Look——

The WITNESS. Excuse me, sir. Yes, we are.

[261] The COURT. I am not concerned with your arguments as to why. He asked you if you did certain things. Answer the question. Then if there is any reason for explaining it, that is all right.

The WITNESS. Yes, sir.

The COURT. You follow every answer with some character of explanation as to why you are doing it. That is all right; you have a right to do it. But I want you to answer the question and then make the explanation.

The WITNESS. Yes.

By MR. ODEAR:

Q. Are you now in the process of making another addition to your bank whereby you have a downtown drive-in service?

A. I am a little confused——

The COURT. Is that true or not?

By Mr. ODEAR:

Q. Are you making plans to have some facilities for drive-in service at your bank?

A. I thought that was the previous question.

Q. The parking lot was the previous question.

A. The drive-in and parking are the same; yes.

Q. As I understand a drive-in facility, that is where you can drive up in your car and transact your business without getting out of your car.

[262] A. Yes.

Q. Are you making arrangements to have that in downtown Lexington now?

A. Yes, sir.

Q. You are looking forward to those things in the future in the face of the competition from the merged bank?

A. Yes.

Q. As far as you know, won't yours be the first downtown bank to offer that kind of service downtown?

A. The drive-in?

Q. Yes.

A. Yes.

Mr. ODEAR. May we have about five minutes? I am almost through with this witness, Judge. If I can confer with my colleagues here——

The COURT. Go ahead.

(Brief intermission.)

Mr. ODEAR. I can finish up, I think, in just a couple of minutes, Judge.

By Mr. ODEAR:

Q. Is Mr. Frank Trimble a member of your board of directors?

A. Yes, he is.

Q. Does he have any connection with Mr. Garvice Kincaid [263] that you know of?

A. In a law firm, yes.

Q. They have their law offices together upstairs in your bank building, don't they?

A. Yes, sir.

Q. Does Mr. Frank Trimble also hold any political office in Fayette County or the City of Lexington?

A. Yes, sir.

Q. What is that?

A. Commissioner.

Q. He is a Commissioner of the City of Lexington, is he not?

A. Yes.

Q. You also have Mr. R. Mack Oldham on your board?

A. Yes.

Q. He is a fromer member and City Commissioner of the City of Lexington, is he not?

A. Yes.

Q. Do you know the dollar volume or the approximate dollar volume of deposits by political subdivisions in the State of Kentucky that you have in your bank?

A. I believe we have a bank attorney here. I am not sure but what this is private information.

The WITNESS. May I ask to speak with him, Judge?

[264]. The COURT. Certainly you may, and you can refuse to answer if he advises it. Is he here available?

The WITNESS. Yes. Mr. Ginocchio.

Mr. ODEAR. I asked him, Mr. Ginocchio, if he knew the approximate dollar volume of deposits made by political subdivisions of the State of Kentucky in his bank—without naming the individual depositors or who they came from. That is, counties, cities, school boards, housing commissions, all political subdivisions.

The COURT. Ask your question so the man can answer it.

Mr. ODEAR. I am trying to explain it to him, Judge.

The COURT. He can understand it. Finish what you are asking him.

Mr. ODEAR. That is all.

The WITNESS. I can give you a total. There is more than the State of Kentucky. I know the totals, including the State of Kentucky. But so far as this, it is a little over $2 million, including the State of Kentucky, approximately.

By Mr. ODEAR:

Q. Do you know of one such account that has been transferred from The First-Security Bank to your bank within the last two or three months?

A. The University of Kentucky; I am not sure about the [265] period of time.

Q. How about the Lexington Housing Commission?

A. I am not familiar with the date; I am not familiar.

Q. I don't want to get into individual customers, so that is as far as I will go.

You say your Trust Department has been actually in operation how long?

A. Approximately two months.

Q. What dollar volume of assets have you been able to attain in those two months of active competition?

The WITNESS. May I ask my attorney?

The COURT. What your assets are? He is not asking for any private individual.

By Mr. ODEAR:

Q. Total assets of your Trust Department.

The COURT. What are your total assets in your Trust Department for the two months.

A. I am not sure. I think it is between $125,000 and $150,000. I am not absolutely sure.

By Mr. ODEAR:

Q. Is that a total of approximately $300,000?

A. No, sir; about $125,000 to $150,000.

The COURT. I didn't understand his answer. Will you read it, Mr. Stenographer?

[266] (The Reporter read the next to the last answer.)

The COURT. There was another question, to which I understood him to say Yes.

Mr. ODEAR. I didn't know whether he meant to say that, or whether those two accounts were the total.

The COURT. You asked him something of that character. You and he began talking together, and of course the reporter can't get it. What are you asking him now?

Mr. ODEAR. That is all, sir. I asked him the total. He said between $125,000 and $150,000, he thought. He was not sure.

By Mr. ODEAR:

Q. These six banks that you say maintain accounts with your bank: Do you recall the total of those accounts from other banks as shown on your year-end report for the year 1961?

A. First I thought I said either five or six, but I am not sure.

The COURT. Answer the question.

The WITNESS. No, I don't know; no, sir.

Mr. ODEAR. That is all.

Redirect examination by Mr. MITCHELL:

Q. Mr. Odear showed you several charts which indicated [267] several categories of banking functions here in Lexington. All of those figures related to percentage growth. Is that correct?

A. That is right.

Q. In growth of absolute dollar amounts, do you feel your growth has equaled that of First National?

A. I do not.

Q. Do you think that the full potential effects of this merger have been felt yet?

A. I do not.

Mr. Mitchell. That is all.

The Court. You are excused.

(Witness was excused.)

Mr. Williams. Your Honor, at this point I would like to say that, based upon the admissions that have been made by the Defendants and filed as part of the evidence in this case; the Government's documents; and the testimony that has been adduced, the Government rests its case.

The Court. The Government rests. Are you ready to proceed, gentlemen?

Mr. Odear. May we confer with you a moment about that, your Honor?

(Conference at the Bench.)

The Court. Gentlemen, by agreement of the attorneys, [268] who have discussed it with me, they feel it necessary that there be a recess until in the morning at ten o'clock.

Mr. Marshal, we will recess until tomorrow morning at ten o'clock.

(Whereupon, at 2:20 p.m., the Court recessed, to reconvene Wednesday morning, 10:00 o'clock a.m., February 21, 1962.)

* * * * *

[270] In the United States District Court, Eastern District of Kentucky, at Lexington

Transcript of Testimony and Proceedings—February 21, 1962

[271]. Proceedings

The Court. Gentlemen, I am ready to proceed.

colloquy re exhibits

Mr. Harville. If your Honor please, we have our documents set up in the same manner that the Government did with a stipulation. If it is agreeable with the Court and Counsel for the Plaintiff, we would like to follow the same course, that is, by marking them now so that they may be referred to.

The Court. All right.

I think first we should have the stipulation.

Mr. HARVILLE. We would like to mark the stipulation, as did the Government, as a separate exhibit.

The COURT. All right.

(Brief intermission.)

The CLERK. Your Honor, Exhibits number 8 to 90 inclusive for the Defendant have been filed.

(The documents above mentioned were filed with the Clerk and marked Defendant's Exhibits Number 8 through 90.)

The COURT. Pursuant to stipulation?

The CLERK. Yes, your Honor. The stipulation is Number 8.

The COURT. You may proceed, gentlemen.

Mr. LISLE. I would like to call Mr. Edward S. Dabney.

[272] Whereupon Edward S. Dabney was called as a witness, and, being first duly sworn, was examined and testified as follows:

The CLERK. The witness, your Honor, is Edward S. Dabney.

Direct examination by Mr. LISLE:

Q. What is your place of residence, Mr. Dabney?

A. Lexington, Kentucky.

Q. What is your connection, if any, with First Security National Bank and Trust Company?

A. Chairman of the Board and a Director.

Q. How long have you held that position?

A. Since the bank came into existence on March 1, 1961.

Q. Prior to that date, did you have any official connection with either of the consolidated banks?

A. I was President of the Security Trust Company.

Q. How long had you held that position?

A. Since 1945.

Q. Mr. Dabney, are you a college graduate?

A. Yes, sir.

Q. What college and what degree?

[273] A. The Law College of the University of Kentucky, Class of 1920.

Q. Following your graduation, were you admitted to the Bar?

A. Yes.

Q. In Kentucky?

A. Yes.

Q. Approximately how long did you practice actively in the practice of law in Kentucky?

A. Seven or eight years, I presume.

Q. How long have you been connected with the banking business?

A. I became connected with the Kentucky Joint Stock Land Bank in 1922 as attorney. That was the first position I had in the banking business.

Q. Would you state briefly your banking connections from that date up until the present?

A. Later I became Vice President of the Kentucky Joint Stock Land Bank and continued in that capacity until the liquidation of the bank about 1941. In 1929, I had a position concurrently with the other one for the time being with the Security Trust Company as Assistant to the President and later as Vice President, and after that as President.

[274] Q. You were President from 1945 until the consolidation of the two banks?

A. Yes.

Q. Explain generally, Mr. Dabney, the nature of your duties in each of these positions which you held with The Security Trust Company.

A. As Assistant to the President, I discharged the duties of an Assistant to a president. As Vice President, I discharged the duties customarily performed by a Vice President. In both of those capacities I was primarily engaged in the trust business.

The trust business was the primary business of the bank. Later when I became President, my duties were extended to the duties customarily performed by a President.

Q. You had responsibility over all of the departments of the bank after you became president?

A. Yes.

Q. Have you had any experience or connection with the Federal Reserve Bank at any time?

A. Not except that I was a Director some years ago for a term of three years in the Cincinnati National Branch of the Federal Reserve Bank of Cleveland.

Q. Mr. Dabney, would you state briefly the history [275] of The Security Trust Company, when it was organized, the purpose of its organization, and its general development?

A. The Security Trust Company was organized in 1886 by the businessmen of Lexington, including a good many officers and Directors of other banks for the purpose of providing a corporate fiduciary which would be capable of rendering good corporate fiduciary services to the community. The original name of the bank was Security Trust and Safety Vault Company. That name continued for a number of years. Subsequently it was changed to Security Trust Company.

The original principal field of the bank's operation was the trust business, that being the purpose for which it was organized.

Later it had a safety vault service for the community. After that, why—well, perhaps from the start, I may say, as best I know, it accepted demand deposits and time deposits. It was not at that time engaged in any commercial banking business.

Later I believe it had a real estate department. And at one time it had a bond department which ceased as a function of the bank, I believe, in 1933.

[276] Q. Approximately when did it enter what you would term the commercial banking field, Mr. Dabney?

A. The Security Trust Company amended its charter in November 1947, and under the amendment procured authority to do commercial banking.

Q. Prior to 1947 was the Trust Company authorized to make unsecured individual or commercial loans?

A. No. Prior to that time it made only secured loans, such as mortgages on real estate or collateral loans secured by stocks, bonds, and other such collateral. It made no unsecured loans prior to November 1947.

Q. Mr. Dabney, following the organization of the Security Trust Company was there any period of time during which it was the only commercial bank in Lexington having trust powers?

A. No. As I remember, the Bank of Commerce had trust powers much before that. The Union Bank did——

Q. I beg your pardon. I asked you following the original incorporation of the Security Trust and Safety Vault Company.

A. I believe at that time. I didn't understand your question. At that time the Security Trust Company was the only bank that exercised trust powers. Whether any of the [277] others had any right to exercise trust powers, I don't know. I think they did not, because that was the reason that the Security Trust Company was organized—to afford trust services to the community.

Q. In the earlier years of your connection with the Security Trust Company, to what extent did the other banks in Lexington actively advertise for and aggressively seek trust business?

A. The Union Bank and Trust Company and the Citizens Bank and Trust Company and the Bank of Commerce, as I remember, had trust powers in 1929 when I became connected with the Security Trust Company.

To what extent they promoted that trust business and aggressively sought business may be a matter of some question or debate.

Q. When the Trust Company was originally organized in its early years, Mr. Dabney, you refer to the fact that it was organized at the behest of the other banks. Did it actually have members of the board from other banks?

A. I can testify from my own memory that Mr. Bassett, who was president of the Fayette National Bank in its later years, and Mr. Warren, who was a vice president of the Fayette National Bank at the same time, were also directors in the Security Trust Company. I remember that of my own [278] knowledge.

Q. Approximately when was it, Mr. Dabney, that the First National Bank began to actively seek and push its trust business?

A. About 1940.

Q. At that time did the other banks in Lexington, or some of them, have trust powers?

A. Yes, those other three I mentioned did.

Q. How about the Second National?

A. It did not at that time. It is only about six years ago that the Second National Bank procured an amendment to its charter whereby it became a trust company and changed its

name from Second National Bank to Second National Bank and Trust Company.

Q. During the last five years state whether or not there has been active competition in the trust field in Lexington.

A. Yes, there has been very active competition.

Q. When did the Central Bank acquire its trust powers?

A. Two months ago, the president testified here yesterday.

Q. Mr. Dabney, what is the primary source of the trust business for any bank?

A. Well, the primary source of business comes from [279] individuals in the community who desire to procure trust services.

Q. Is there any particular group of those individuals a particular bank would more actively seek its customers from?

A. Yes. In the trust business it is well recognized that any particular bank would cultivate principally its own customers.

Q. Would that be the customers in what branch of the bank?

A. In all branches.

Q. Including commercial and deposit customers?

A. Yes.

Q. Mr. Dabney, from what source is the principal competition that the Security Trust Company faced for trust business prior to the consolidation?

A. Of course the banks in the community competed among themselves for the trust business; but the primary competition was between—as far as the Security Trust Company was concerned—individuals who were performing trust services. That was the bulk of the business then, and still is.

Q. Mr. Dabney, has the bank caused to be prepared certain charts showing the number of appointments in the Fayette County Court, the number of court appointments of [280] fiduciaries from the year 1940 through 1961? That would be Exhibit 74.

Mr. LISLE. I wonder if the Court might have a copy of that.

The COURT. It has been already filed as Exhibit 74.

Mr. LISLE. Yes, sir, 74.

By Mr. LISLE,

Q. That exhibit has been filed as Defendant's Exhibit No. 74. I ask you, Mr. Dabney, to refer to that briefly and to

explain to the Court what that shows with reference to the appointments—not figures, now, but just generally what this shows.

A. Let me see if this is what you are talking about (Showing document to attorney).

Q. That is the one, yes.

A. I have before me a copy of such exhibit. It is, according to its title, "Survey of Probate Records of Fayette County Court As To Number of Court Appointments and Dollar Volume of All Estates That Were Administered By Banks and By Individuals Each Year, Together With Percentages As To Each For The Years 1940 Through 1961."

Q. You have testified that the First National started actively seeking this business about 1940. Refer to the first column on the chart and state how many appointments the First [281] National secured during 1940 from the Probate Court of Fayette County.

A. In 1940 the First National had two appointments in number, with a dollar volume of $85,000. The two appointments were 51/100ths of one percent of the total, and the dollar volume was 3.17 percent of the total of all appointments.

Q. How did that compare with the trust appointments of the Security Trust Company of that year?

A. The Security Trust Company had 14 appointments in number, with a dollar volume of $1,039,000. I am leaving off the hundreds of dollars there, if you want me to or not, as you please—whatever you want.

The percentage in number of appointments was 3.56 percent, and in dollar volume was 38.72 percent.

Q. Of course there is no use reading the other figures showing none for the Citizens and a very minor amount for the Union; none for the Bank of Commerce; none for the Second National; and none from out-of-town banks.

But get down to the total there. You referred to competition from individuals. How many individual appointments were there?

A. There were 375 individual appointments, with a dollar volume of $1,533,000. That was, in number of appointments, [282] 95.42 percent; and in dollar volume it was 57.14 percent.

Q. Then the last shows the total?

A. The last figure in the column shows the total number of appointments, 393 in number; and $2,684,000 in volume.

Q. Now with the competition that was coming from the other banks you referred to, take a five-year period and see how the picture shapes up there as to number of appointments and percentage of total appointments.

A. You want me to take the year 1945?

Q. Take the year 1945.

A. In 1945 the First National had ten appointments in number, for a total of $1,009,000. This was 1.77 percent in number, and 22.61 percent in dollar volume.

Q. How did that compare with the Security Trust Company for that year?

A. For that year the Security Trust Company had nine appointments in number, for a total of $263,000 in dollar volume. And that was 1.59 percent in number, and 5.91 percent in dollar volume.

Q. In that year, then, the First National passed the Trust Company in both number and dollar volume?

A. Passed it in dollar volume by about 4 to 1.

Q. How about the individual appointments? How was that [283] figure holding up?

A. In the year 1945 the number of appointments of individuals was 538, and in dollar volume, $3,093,000. The percents were, in number of appointments, individuals qualified, 95.05 percent; and in dollar volume, 69.29 percent.

The total number of appointments in 1945 was 566, and the dollar volume was $4,463,000.

Q. Let's take another five-year history of this development and see what we find.

A. Are you referring to the year 1950?

Q. Yes, sir.

A. In the year 1950, the First National procured 16 appointments in number, for $416,000 in dollar volume. That represented 2.77 percent in number, and 8.89 percent in dollar volume.

The Security Trust Company in the same year procured 12 appointments in number, and $543,000 in dollar volume.

Q. How about the Citizens?

A. Do you want the percents?

Q. They show there.

A. All right.

Q. How about the Citizens at that time?

A. The Citizens had 10 appointments in number, for a dollar volume of $67,000.

[284] Q. I believe you are in the wrong column.

A. I beg your pardon; I switched over to 1949. I will go back now to 1950. The Citizens in 1950 had 15 appointments in number, for $160,000 in dollar volume.

Q. In other words, they at that time had more in number, though less in dollar volume, than the Security Trust Company.

A. Yes.

Q. Were the individuals in that year still getting a larger percentage of the business?

A. Yes. Individuals had appointments, 529 in number; and $3,134,000 in dollar volume.

Q. Let's take 1955 and see how the picture is changing.

A. In 1955 the First National had 17 appointments in number; $4,442,000 in dollar volume. The Security Trust Company, 18 appointments in number; and $1,630,000 in dollar volume.

Q. And the Citizens?

A. The Citizens had 31 appointments, more than either of the other two banks, for $1,623,000 in dollar volume. It nearly coincided in dollar volume with the business of the Security Trust Company.

Q. I believe that was after the Citizens Bank and Trust Company and the Union Bank had consolidated?

A. Yes. I think they were consolidated before that. [285] That means the Citizens Union Bank, not just the Citizens.

Q. And the individuals in that year?

A. In that year the individuals had appointments of 584 in number, and $4,154,000 in dollar volume.

Q. 1960—the last year before the consolidation became effective?

A. In the year 1960 the First National had 23 appointments in number, and $2,929,000 in dollar volume. The Security

Trust Company had 19 appointments in number and $1,005,000 in dollar volume.

The Citizens Union—I don't know whether they were a national bank then or not, but I guess that is not material.

[286] Q. That wouldn't be material.

A. The Citizens Union had 24 appointments in number.

Q. Is that more than——

A. That is more than either The First National or the Security Trust Company. With a dollar volume of $478,000. The individuals in 1960 had 575 appointments in number, for a dollar volume of $6,572,000.

Q. Now, Mr. Dabney, do you have any competition from any out of town banks in this trust field?

A. Yes, we do. There is a limited amount of trust service being rendered by banks from away from Lexington. Over the years, I have observed where some of the Louisville banks have qualified in some fiduciary capacities here.

I have made no computation or survey of it, but I remember it. And I remember in one or two cases where New York banks rendered, and maybe still do, trust services in this community. There may be others, but I can't say I know any others.

Q. I will direct your attention, Mr. Dabney, to the compilation on your chart immediately above the compilation on the individuals and ask you what that compilation is?

A. What year do you want?

[287] Q. Out of town banks. I wish you would refer to the total of the out of town banks during that twenty-two-year period.

A. Yes.

For the twenty-two-year period covered by this survey, out of town banks had 39 in number and $1,702,000 in dollar volume.

Q. How did that compare with the total of the bank of Commerce during this period, for example?

A. You are talking about the total for the whole period?

Q. Yes, sir.

A. Well, let me see.

The Bank of Commerce, the total for the whole period was 83 qualifications in number.

Q. Sixty-three.

A. I beg your pardon. Sixty-three. That is right. For a dollar volume of $1,627,000.

Q. Second National?

Of course, it was in for only five years?

A. Yes. Well, their total was 35 appointments in number, with a dollar volume of $1,032,000.

Q. The out of town banks, then, during the period had a greater dollar volume than The Bank of Commerce?

[288] A. Yes. And the Second National.

Q. Of course, that was in for only five years.

A. The answer is yes.

Q. Now, do you have also before you Exhibit Number 75, Defendant's Exhibit Number 75, showing the results of the same survey, but limited to the dollar volume of estates having $10,000 or more in each estate?

A. Yes.

Q. I will not go through that. It would speak for itself. But taking the average over the period for the individuals, even in these estates of this size, what percentage of individual appointments were there out of the total?

A. That is the next to the last column, isn't it?

Q. The average for all of the individuals?

A. You want the average or the total? I didn't understand you.

Q. The average.

A. The average?

Q. Yes.

A. The average is 61, for a total of $2,521,000.

That is 64.73 percent in number, and 45 percent in dollar volume.

The Court. Your 61——

[289] The Witness. That is 61 in number of appointments on the average.

The Court. That is the average per year?

The Witness. Yes, sir.

The Court. A total of 1,344.

The Witness. Yes. That is the total for the whole period. And 61 is the average per year.

By Mr. Lisle:

Q. Now, to ascertain whether or not that average is still holding, let's look at the last two years, 1960 and 1961, and see what the situation was in Fayette County.

A. What figures do you want?

Q. I want the figures on the individual appointments for both 1960 and 1961.

A. For the year 1960, the number of appointments for individuals was 98. There were 98 qualifications of individuals.

Q. Out of a total of how many?

A. For a total of $3,994,000.

Now, in the year 1961, there was a total of 117 appointments of individuals with a dollar volume of $5,451,000.

Q. Percentagewise how are those individual appointments?

[290] A. Well, in number——

Q. Both number and dollar volume?

A. In number, they were 67.27 percent, and in dollar volume, 48.83 percent.

Q. Now, Mr. Dabney, from this information, where in your opinion does the greatest possibility of growth for the trust departments in various banks in Lexington, not only the First Security but the others, lie?

A. The principal competition lies between the banks as corporate fiduciaries and individuals as individual fiduciaries.

Q. Is this situation in any way changed by the merger?

A. Not at all, as far as I see.

Q. You referred to the competition which existed between and among the various commercial banks in Lexington for this business. Did that competition which existed before the merger continue to exist after the merger?

A. Just the same after the merger as it did before. I know of no difference whatever in it.

Q. Now, how about the competition which has been to a certain degree from the outside banks which this chart discloses; has the merger in any way affected the ability of the consolidated bank to compete with the larger banks from the larger cities?

A. For trust business?

[291] Q. Yes, sir.

A. Well, I don't know how much it has improved the First Security's position. It may have some. I can't define any difference there without getting into all sorts of conjecture, which I don't know would be worth anything.

Q. Now, Mr. Dabney, considerable reference has been made to the trust assets held by the two combining banks and now by the First Security. Are those assets assets of the bank?

A. No. They are assets of the trust estates which the bank administers.

Q. Is the amount of those trust assets ordinarily made public?

A. No. Banks don't like particularly to tell about that business. They are not made a part of the call reports that are published. They are made a part of the call reports that are not published.

The data is supplied to the regulatory authorities to whom the bank makes its call reports. But it is not made public.

Q. Are those assets assets which have been accumulated over many years in many cases in the bank's trust department?

[292] A. Yes.

Q. Have you trusts in the Security Trust Company prior to the merger and the combined bank afterwards where the assets have been there for many, many years?

A. Many, many years, yes.

Q. Does the existence of those trust assets in the beneficiaries' accounts in that bank give that bank that has the larger proportion of those trusts assets any substantial competitive advantage over another bank which wishes to actively seek trust business?

A. No.

Q. Would you explain why?

A. Well, when a person dies, if he leaves his estate in the hands of The First Security Bank, the bank administers his estate if as a trust it continues in trust. And at the time designated by the will, if it be a testamentary trust under a will, why, the settlement is made, and the assets are distributed. And that is the end of the transaction.

Q. Are those assets utilized by the Commercial Department of the bank for its benefit?

A. Not at all. They don't belong to the bank. They belong to the estate that the bank administers.

Q. For whose benefit are they administered?

[293] A. Administered for the benefit of the beneficiaries of the estate. In the case of a will, the will directs what distributions of income and of principal shall be made by the fiduciary. The fiduciary handles the estate in comformity with the terms of the will, distributes the income, and ultimately the principal as the will directs it to be distributed.

Q. All right.

Now, say up until approximately 1947, the Security Trust Company did not engage in the commercial banking field? Is that right?

A. That is right.

Q. Now, do you have a chart there showing the relative size of the various deposits in Lexington for the year 1935 to 1960. I believe that is Exhibit Number 22, Defendant's Exhibit Number 22?

A. Is this what you are talking about?

Q. Yes, sir.

A. Yes, sir, I have such exhibit.

Q. Now, at the close of 1947 when The Security Trust Company you say first entered the commercial banking field, what were their total deposits?

A. $10,263,000.

Q. What were the total deposits of The First [294] National, which was the largest bank at that time?

A. $39,250,000.

Q. During the period from there through 1960, was The Security Trust Company able to successfully compete for additional deposits?

A. In 1960, The Security Trust Company deposits amounted to $17,402,000, which was 11.9 percent.

Q. How had the Central Bank grown during that period?

A. In 1945, the total deposits of the Central Bank were $1,148,000, and by 1960, they were $14,144,000.

Q. Now, do you have before you also tables showing the growth and total deposits of all Lexington banks from 1945 to 1960, growth of total assets and growth in total loans?

They are on the three charts there. They are numbered Defendant's Exhibits Number 30, 31, and 32.

A. I have these charts. I guess that is what you are talking about?

Q. Yes.

Refer to the one showing total loans.

A. Yes.

Q. That would be Number 31, I believe. It shows total loans. And I would like for you to point out how the Security Trust Company grew in loans during that period and [295] how that growth compared with the other Lexington banks.

A. On December 31, 1945, the total loans of Security Trust Company was $852,000, and at the end of 1960, had grown to $12,317,000.

Q. What percentage of increase in the loans of the Security Trust Company during that fifteen-year period had occurred?

A. That was an increase of 1,445 percent.

Q. During that period, what was the largest bank in Lexington?

A. The First National.

Q. Was The Security Trust Company able to compete successfully with First National for loan business during that period?

A. As I said, the percentage increase in The Security Trust Company was 1,445 percent, whereas the percentage increase of The First National was 460 percent.

Q. How about the percentage increase of The Central Bank?

A. The Central Bank increase was 1,035 percent.

Q. Did both the Bank of Commerce and The Second National increase faster proportionately in loans than the First National during that period?

A. Yes. The percentage increase for the Bank of [196] Commerce was 650 percent against an increase of only 460 percent for The First National.

And the percentage increase for The Second National Bank was 693 percent against an increase of only 460 percent for The First National.

The Court. Would you give me the reference to your table so I can keep up with you? That percentage of increase I don't find here on Number 32 where I have been working.

Mr. Lisle. That is the fourth line, if the Court please, on Defendant's Exhibit Number 31.

The Court. All right.

By Mr. Lisle:

Q. Now, I note from that chart, Mr. Dabney, that at the beginning of the period The First National had $7,698,000 in loans, out of a total of $15,502,000, in your first line.

A. Yes, that is on the first line.

The total loans as of December 31, 1945 of all the banks listed were $15,502,000, and The First National had of that $7,698,000.

Q. Or almost half?

A. Yes.

Q. Now, in your last line on that chart you show [297] the percentage of the total growth in lines which each bank was able to obtain. And I note that although the First National had almost fifty percent of the loans in 1945, it obtained what percent of the additional growth?

The Court. What table are you using now?

Mr. Lisle. The last line on Defendant's Exhibit Number 31, your Honor.

The Witness. The last line on this table. It says on the lefthand side "Percentage of total growth in loans that each bank acquired". The First National acquired 38.2 percent.

By Mr. Lisle:

Q. During this period, were you also able to compete successfully with The First National and the other banks of Lexington for deposits? I refer you now to table Number 32. That is, Defendant's Exhibit Number 32.

Do you have that exhibit before you?

A. Yes.

That exhibit is entitled "Table Showing Growth and Total Deposits of All Lexington Banks in Dollar Volume, and Percentage Growth from December 31, 1945 to December 31, 1960."

Is that what you are referring to?

Q. Yes.

[298] A. I have that before me here.

Q. What was the dollar volume growth and the percentage growth of the Security Trust Company during that period?

A. The dollar volume growth was $10,562,000, and the percentage growth was 254-plus percent.

Q. What was the total dollar volume growth of the First National?

A. The total dollar volume growth of The First National was $15,750,000, and the percentage growth was 136-plus percent.

Q. Now, to make those percentage figures clear, Mr. Dabney, that is the percentage of deposits in 1960 to the percentage of deposits in 1945, and the growth then would be 36.69 percent, would it not, if you refer to the actual figure?

In other words, the growth is the difference between 100 percent and 136 percent at the termination?

Compare the figures there.

A. The Trust Company's deposit total in 1945 was $6,840,000.

Q. That is right.

A. In 1960, it was $17,402,000.

Q. Which is 254.45 percent of $6,840,000?

[299] A. Yes.

You are saying the gain would be——

Q. The gain would be 154 percent?

A. No. I think it would be 254 percent.

Q. Well, of all of the banks in Lexington, which bank grew at the lowest rate during that period?

A. The table shows that the Citizens Bank—I presume the Citizens Union National Bank and Trust Company, which was a combination previously of The Citizens and the Union Bank, had a growth of 153 percent.

Q. That is their——

A. That is the lowest.

Q. How did that compare with The First National?

A. I may be confused, if your Honor please, as between the percentage of deposits and the percentage of the growth. You will have to get me on the right track as to what I am supposed to testify about.

Q. The figures shown on the table, Mr. Dabney, are the percentage of deposits?

A. That is what I cited.

Q. And not the percentage of growth?

A. All right.

Q. Because the growth would represent the difference between a hundred percent and the percentage shown there. [300] A. Well, the last line there gives percentage of total growth in deposits that each bank acquired. Is that what you are asking me about?

Q. No. I am asking you about the line above that.

A. The line above that?

Q. Yes.

A. What is the question now?

Q. I am asking you which had the smallest increase in total deposits percentagewise during the fifteen-year period?

A. The Citizens Union.

Q. How did that compare with The First National?

A. The Citizens Union was 153 percent and The First National was 136 percent.

I beg your pardon.

I am finally understanding what I am talking about here.

The First National had a percentage of 136 percent and The Citizens Union, 153 percent. I overlooked the First National.

Q. And at the beginning of the period, The First National had over fifty percent of all of the deposits in Lexington, did they not?

A. Yes.

[301] Q. And yet their percentage of growth was the smallest?

A. Yes.

Q. Now, in dollar volume, how did the percentage of growth of the various banks compare? That is on the third line. The actual dollar volume of growth?

A. Well, in dollar volume, The First National grew $15,750,000. The Security Trust Company grew $10,562,000. The Central grew $12,996,000.

Q. The growth of Central was larger in dollar volume than the Trust Company?

A. Yes. By about two and a half million dollars. The Bank of Commerce grew $9,412,000.

Q. Almost as much as The Trust Company?

A. Yes. The Second National grew $4,933,000. And The Citizens Union, $8,545,000.

Q. What, if anything, does that indicate to you, Mr. Dabney, concerning the ability of the smaller banks to compete with a larger bank in the community which at the beginning of the period had approximately fifty percent of the deposits and fifty percent of the loans here in Lexington?

A. Well, here is the biggest bank that grew the least in percent, and the smallest bank which grew the largest in percent.

[302] Q. Was your bank able to compete successfully?

A. Yes.

Q. Now, Mr. Dabney, in addition to the trust business and the time and savings deposits, your bank made loans, of course, before the consolidation?

A. Yes.

Q. After the Commercial Banking Department was opened, you made loans both secured and unsecured?

A. Yes.

Q. Did you have any competition in Lexington from any financial institutions other than the other commercial banks for loans?

A. Yes.

Q. Well, let's take those up, say, for real estate loans. Where did you get competition other than from the other banks?

A. From insurance companies which were lending on commercial properties and on homes. We competed with them.

Q. Did you compete with savings and loan associations?

A. Savings and loan associations, yes. We competed with them for mortgage loans.

Q. Did you compete with the savings and loan associations in any other way other than for mortgage loans?

[303] A. Yes. We competed heavily with them for deposits, savings deposits.

Q. Up until just recently were the savings and loan associations in Lexington offering a higher rate of return on savings than the banks in Lexington were permitted to offer?

[304] A. Yes. The banks were restricted by regulations up until recently, and in recent years, to 3 percent interest on time and savings deposits; whereas the building and loan associations were paying higher rates.

Q. Was this competition with the insurance companies and the savings and loan associations for mortgage loans nominal or substantial?

A. Very substantial.

Q. Does that competition still exist?

A. Yes.

Q. Has the merger had any effect on the existence of that competition?

A. Oh, I would say no material effect.

Q. Has it in any way permitted the combined bank to compete for any more of that business?

A. Well, to the extent that the combined bank from time to time may have funds that the two banks previously might not have had, it enables it to compete because you have to have money to lend—if you don't have an unlimited amount of it.

Q. Does your bank compete in any way with what are termed sales finance companies?

A. Yes. We compete with the companies that make loans on automobiles and such things as that. We compete heavily with them. We have an Installment Loan Department that [305] operates particularly to make loans of that kind, in direct competition with the finance companies.

Q. Is that business that goes to those sales finance companies substantial?

A. Yes.

Q. Does that competition still exist?

A. Yes.

Q. The merger has not destroyed any of that competition?

A. None at all.

Q. To go back for a moment to real estate loans, loans secured by real estate, in addition to the insurance companies and the building and loan associations, do you face any competition from any other institutions on mortgage loans?

A. Well, there are some other institutions here which make real estate loans. The Transylvania College here makes real estate loans; the College of the Bible makes real estate loans; the Midway Orphans' School makes real estate loans.

There may be others I don't think about right now—and individuals make some real estate loans.

Q. Are there certain specialized banks that make loans on farms?

A. Well, any bank can make a loan on a farm that wants to.

Q. A Federal Land Bank?

[306] A. Yes, a Federal Land Bank makes loans solely on farms.

Q. Then you have, of course, the other commercial banks in Lexington.

A. Yes.

Q. Did the consolidation in your opinion have any effect whatsoever on the ability of the other commercial banks in Lexington to compete with these real estate loans?

A. Not at all.

Q. In your consumer loan field, your sales finance companies, those are usually loans secured by chattels?

A. Yes.

Q. Automobiles, household equipment, matters of that kind?

A. Principally, but not altogether. There are some signature loans in the Installment Loan Department.

Q. Did the consolidation in your opinion have any effect on the ability of the other banks in Lexington to compete for that business?

A. Not at all.

Q. We have in Kentucky what is termed as small loan companies.

A. Yes.

Q. Was there any competition before the consolidation between your bank and those small loan companies who are [307] authorized to make loans up to, I understand, $800?

A. Yes.

Q. In what way was there competition?

A. For many years banks didn't seem to catch on to the fact that they ought to make loans to small borrowers. The fi-

nance companies pretty much monopolized the field, charging high rates of interest—up to 42 percent a year. In more recent years banks have competed.

Our Installment Loan Department in the Security Trust Company was organized in 1954. We found that there were many of those people who were paying 42 percent a year for money who would qualify as acceptable bank borrowers. I daresay that there have been many people who borrowed from us in our Installment Loan Department who formerly borrowed from these small loan companies.

We have competed with them all the time. We felt like the banks, lending money at so-called bank rates, were rendering a service to the community that hadn't existed before, and is highly beneficial to the small borrower who could borrow money at much less—a fraction of what he was paying a small loan company.

Q. Do I gather from that that banks had failed to do a selling job, as it were, and let the business go by default?

A. Well, call it anything you want to. The banks [308] should have gotten into the business before they did, in my opinion, and in the opinion generally of the banking fraternity. Why they did that—there you are; they did. They were late getting into the field.

Q. Is the consolidated bank continuing that service?

A. Yes. We have a large volume of loans in our Installment Loan Department. I have some figures on it here, I think.

Mr. ODEAR. This is Exhibit No. 36, your Honor.

By Mr. LISLE:

Q. I direct your attention to Defendant's Exhibit No. 36. That show a comparison of installment loans for the year-end date since the beginning of business of both First National and Security Trust?

A. Yes.

Q. What growth does that indicate in the Installment Loan Department of the First National from 1949 to 1961?

A. In 1949 the dollar amount of loans by the First National—these are installment loans—was $1,069,000. By 1961 that total had increased to $12,204,000.

Q. That is the figure at the top of the column?

A. Yes. And the number of loans—in 1949 the number of loans was 1875; and in 1961 the total loans, 15,527.

Q. What was the average size of those loans, Mr. [309] Dabney?

A. Well, in 1949 the average size of the loans was $570. In 1961 the average size of the loans was $786.

Q. How about the record in the Installment Loan Department of the Security Trust Company?

A. Well, I said that the Security Trust Company installed an Installment Loan Department in 1954. At the end of that year the total loans on the books were $813,000. And at the end of 1961, they were $2,385,000.

At the start, the number of loans were 954, and by 1961 the total number had increased to 2,431.

Q. The average size of the loans made by the Security Trust Company Installment Loan Department——

A. They range a little higher. In 1954 the average was $852. And in 1961, the average was $981. But in all of that period the average of the First National, I believe, never exceeded $800. In one year the average of the Trust Company did get up to $1200.

Q. From that information, Mr. Dabney, are you able to state whether or not you did compete for these small loans?

A. Yes. These are all small borrowers. They borrow a few hundred dollars. Some of them $100, $200, or $300. They are getting the benefit of lower bank rates.

[310] If it weren't for the banks, many of them would have to go to small loan companies, and would go to small loan companies, to get this money.

Q. You state that service will be continued under the consolidation?

A. Yes, sir. The total loans of both banks at the end of 1961, the total loans in number came up to 18,000 loans; and in dollar volume to $14,500,000—all made to small borrowers and all in great degree competing with the small loan companies.

Q. Is there any reason, Mr. Dabney, why the other banks in Lexington can't compete for that business if they want it?

A. They are.

Q. They are?

A. Yes, sir; they are competing.

Q. Will the consolidation, in your opinion, in any way affect the ability of the other commercial banks in Lexington to compete for these small loans?

A. Not at all. It won't change it in any way whatever.

Q. Now, Mr. Dabney, how about competition from larger institutions in the larger cities? Do you have any competition from those banks?

A. Yes. They make some loans in our community. Some [311] of them are made in collaboration with the local banks, where local banks seek funds to lend, where the local banks are not able to take care of the amount that the borrower needs.

The local banks go to their correspondent banks in larger cities and get the correspondent banks to participate with the local bank in the loan. Beyond that, banks in Louisville particularly, and Cincinnati, make some loans in this community themselves direct to local borrowers.

Q. Will this consolidation in any way affect the ability of the combined bank to compete successfully with those institutions?

A. It will enable the combined bank to compete more successfully with banks in Louisville and Cincinnati, say, and other places for these larger loans. I might say that, since the merger, the First Security has made a couple of brokers' loans to brokers' firms to their head office in New York to our limit for a special purpose, where we had never been able to get any business from that source unless we happened to get some assistance from our New York banks.

We got this ourselves, direct, in competition with the New York banks.

Q. You say that was in competition with the New York banks that you got those loans?

A. Yes.

[312] Q. Did getting those loans take any business away from any of the other banks in Lexington?

A. Not at all. They weren't interested in the loans. At least, I never heard of them manking any loans or having any interest in loans like that.

Q. Did the consolidation in any way affect the ability of the

other commercial banks in Lexington to participate in loans in excess of their lending limits to their correspondent banks?

A. Not at all. They before the merger were in the same identical position they were after the merger with respect to such participation.

Q. Does the same competition which existed with the other commercial banks in Lexington for the various types of loans which existed before the merger continue to exist?

A. Just the same.

Q. Are they still competing with you?

A. Yes.

Q. You don't notice any difference?

A. None.

Q. Now, Mr. Dabney, I wish you would give the Court a brief resume of the steps leading up to this consolidation, when it was first started, how the discussion happened to be initiated. [313] A. In the year 1957 a banker in Louisville—and I refer to Mr. Ira Porter, then a vice president of the Louisville Trust Company, who had formerly resided in Lexington and had been employed by a bank in Lexington, who was familiar with the community and was familiar with the banking situation in the community——

Q. Just a minute. That bank in Lexington by which he had been employed: Was that either the First National or the Security Trust?

A. Neither. Mr. Porter approached representatives—officers, I should say—of each of the two banks separately, and he said that in his opinion it would be advisable for these two banks to merge; and he inquired from these people separately if they thought there would be a genuine interest on the part of their respective banks in a merger of the two banks.

Q. What substantially were the reasons given that the merger of these two banks might be advisable?

A. After the representatives of each bank had replied in the affirmative to Mr. Porter's question, there was a meeting in Lexington attended by Mr. Porter and by representatives of the two banks, in which Mr. Porter outlined to these persons his reasons for thinking that the merger would be advisable.

In the first place, he said that Lexington was in the [314]

process of a large industrial and commercial development; that the community needed a larger bank than it had.

Q. On that point, Mr. Dabney, has Lexington since World War II been in such a development?

A. Well, yes. Mr. Porter went on to say that, as the years go by and as the immediate years go by, Lexington is going to grow even more than it had in 1957. He predicted that it would. He emphasized that the community then needed a larger bank, and as it continued to grow it would need it more and more. And that if these two banks merged, it would be highly beneficial to this community.

Mr. WILLIAMS. Your Honor, I would like to object to the statements made by someone else, unless Mr. Dabney was present and heard what was said. I don't object——

The WITNESS. Yes, I was present.

In the second place, Mr. Porter reported and advised this group—of which I was one of them, Mr. Williams—that it would be beneficial to the officers and the employees of the bank to be connected with a larger institution and to have larger opportunities for service, advancement, promotion, and increase in their compensation.

And in the third place, he recommended and advised us that it would be in the interest of the shareholders to merge in that some economies in operation could be effected, [315] and in that as we were able to compete with banks in larger cities and could get more business for Lexington, we would bring business here—that that, being beneficial to the community, would in turn be beneficial to our bank. And he said it would be beneficial to all banks in Lexington, be beneficial to everybody; nobody would suffer; everybody would benefit from this consolidation, in his judgment.

That was the premises upon which Mr. Porter based his recommendation that these banks merge.

Mr. WILLIAMS. Your Honor, I would like to object to this testimony on the further grounds that it is hearsay. If Mr. Porter made these statements, he ought to be called to make the statement here.

I think it is inappropriate for Mr. Dabney to testify as to what Mr. Porter said or thought.

Mr. LISLE. I believe the Government introduced Mr. Porter's report covering these very points as one of its exhibits.

Mr. WILLIAMS. We have offered in evidence the report, but that is entirely different, your Honor, from Mr. Dabney testifying as to what Mr. Porter said or may have thought.

The COURT. Well, Mr. Dabney is now answering the question as to why they entered into this merger; and he [316] is stating that he had this information and advice from a Louisville banker who came here.

While of course it does not establish those facts, it does establish the basis for the consideration of the merger. As far as establishing the proof of those facts, it doesn't.

Mr. WILLIAMS. Very well—as long as it is understood.

The COURT. All right.

By Mr. LISLE:

Q. Mr. Dabney, let's direct our attention, then, to these premises on which you state this recommendation was based. I will ask you to state briefly to the Court the development which has occurred in Central Kentucky, Fayette County, and the surrounding counties generally since the end of World War II and the change, if any, in the character of business in this area.

A. Back to the period of World War II Lexington had a very limited industrial development. Very few industries were here. Lexington had a fine educational program here. The University of Kentucky was here; Transylvania College; College of the Bible; Sayre School. It had a fine educational background and it had a fine agricultural background.

This is a fine territory here for the raising of particular [317] crops, like tobacco, which is the principal so-called money crop and other crops. It had an agricultural background.

In addition to that, it had a prominent place in the country and in the world as a horse farm development. There were many horsefarms here, and they raised some of the finest thoroughbreds in the world—we would like to say, Mr. Williams; and we have data to back that up. That was the general situation here.

Since the Second World War various industrial concerns have come into the community—not, we hope, to impair these vir-

tues of which I spoke; but, for instance, the General Electric Company has two plants here—have had for several years now.

More recently, the International Business Machines Corporation has built a large plant here. I understand at this time as many as 3,000 employees or more work in the plant of the International Business Machines, and that at the present time this company makes all of its electric typewriters in its plant at Lexington.

Another case was the Square D Company, an electrical manufacturing company. It built a plant here. Since then it has added 50 percent to the size of its original plant; and in recent months has let a contract for the addition of another 50 percent increase to the original plant. So that [318] when this second addition is completed, they will have doubled the plant, and they have a number of hundreds of employees here—say, well, perhaps more than a thousand now—will have more shortly.

In even more recent times the Reynolds Tobacco Company bought a tract of several hundred acres out south of Lexington and have built modern storage warehouses there, where they have modern facilities for handling tobacco that is grown and which they buy at the local warehouses and which they re-dry on process in hogsheads until it is ready to be used in the manufacture of tobacco.

I can't claim any great knowledge, but it is thought that they have made plans for a much larger future development there.

There are other plants. The application of the bank to the Comptroller of the Currency for a merger lists them more fully than I have here. I would be glad, if I may, if you want me to, if it is all right, to refer to the application and tell about some of these other plants that are here. I don't know that I can remember all of them from my own memory.

Q. I think the application will show that more in detail, Mr. Dabney. What I wanted to establish was whether or not the industrial development in this community has been substantial since the end of the Second World War.

[319] A. It has not only been substantial; we think it has been extraordinary—much greater than industrial developments in other places in the country, certainly much greater than the average.

Q. This meeting with Mr. Porter that you spoke of was in 1957, you say?

A. Yes.

Q. Since that time has Mr. Porter's prediction of continued development and expansion been realized?

A. Yes. We have had a persistent and consistent increase in our population and in the industrial field here since that time. His predictions that Lexington would continue to grow fairly rapidly when he made those predictions in 1957 are being abundantly carried out.

Q. Is there any other recent development, Mr. Dabney, which in your opinion would tend to orient more business toward Lexington, particularly from Eastern and Southeastern Kentucky?

A. The University of Kentucky has built a College of Medicine upon its campus, that cost, as I understand, around $30 million. It has facilities there for a College of Medicine which will in time, when it gets to operating fully, probably have several hundred or more than a thousand people employed there.

[320] That will tend to draw people from all of this area, Central Kentucky and Southeastern Kentucky, to Lexington for the facilities of the hospital of the College of Medicine at the University of Kentucky.

Q. How about the facilities in the transportation field for getting to Lexington from those areas? Has there been any development in that field recently?

A. The State of Kentucky has sold bonds for the construction of a four-lane throughway, I think it is, from near Lexington on the east up into the mountains. That road is being built and that will make Lexington much more accessible to the mountain area where this road runs up there.

More than that, the Federal Government is building throughways north and south and east and west that will run near Lexington, serve Lexington, and will make it easier to get from this area into Lexington. I drove up to Mount Sterling the other day in thirty-five minutes on the new road. Most of the way it was on the new road. It used to take you 50 minutes or an hour to get there on the old road.

Q. In view of this development, why would it be advantageous in your opinion to have a larger bank? What is the connection?

A. A larger bank will be able to serve this area better than the two banks separate would be able to serve [321] this trade area here. Our bank has correspondent bankers in all—not in all, but in some of—these towns in this Central and Eastern Kentucky area. They are now using principally Louisville and Cincinnati and other places for their out-of-town services.

We expect to be able to have a bank of sufficient size to serve those smaller banks in this area here. That is one of the principal reasons for the merger.

Q. Would that adversely affect the ability to compete with these other commercial banks in Lexington?

A. As best I know, the only other bank in Lexington that is interested in this business at all is the Citizens Union. They have some deposits from the same territory. Naturally the two bank—theirs and ours—would compete with each other.

But as far as I know, they are the only ones that have any business of that kind or have taken any interest in it or gotten any—wanted to bother with it.

The COURT. It is twelve o'clock, gentlemen. We will recess until 1:30.

(Whereupon, at 12:00 o'clock noon, the Court recessed until 1:30 p.m. of the same day.)

[322] *Afternoon Session (1:30 p.m.)*

The COURT. You may proceed.

Whereupon

EDWARD S. DABNEY resumed the stand, was examined, and testified further as follows:

Direct examination (resumed) by Mr. LISLE:

Q. Mr. Dabney, from what sources do you anticipate that the combined bank will be able to obtain additional banking resources for this area?

A. Well, as we are a larger bank, we can get additional deposits, we think, from larger corporations, some of whom operate in our community or in our general territory of central Kentucky, southeastern Kentucky.

The COURT. Speak louder, please.

The WITNESS. Yes, sir.

We can get additional deposits from corporations, the larger ones perhaps, that operate in our community here, that operate in central Kentucky, southeastern and eastern Kentucky.

By Mr. LISLE:

Q. Are those deposits deposits that are now going into the other banks in Lexington?

[323] A. No, I wouldn't think so. We are trying to get new money into the community.

Q. With what banks, then, and what localities will you be in competition for that money?

A. Principally Louisville and Cincinnati.

Q. Now, you made reference, I think, before the recess to certain correspondent banking business with the other banks throughout central and southeastern Kentucky.

A. Yes.

With what banks will you principally be in competion for that business?

A. Well, the Louisville and Cincinnati banks are the two banks where most of these small banks in Kentucky keep deposits. They keep them in other places, but essentially they are the two localities where they send checks to be cleared, where they deposit their money.

We think our merged bank would be able to compete with Louisville and Cincinnati for those deposits. We are closer to the banks in those areas than the banks in Cincinnati and Louisville.

We are right here next door to them. We think we will be able to compete well with banks in Louisville and Cincinnati for that deposit business and bring the money to Lexington.

[324] Q. Would that, in your opinion, have any significant effect on the other banks here in Lexington?

A. Not at all. The only other banks which I know pays any attention to those deposits is the Citizens Union.

Q. Do you think it will adversely affect their position in any way?

A. Not at all. We will just be in normal competition with them. Their officers, at least one of them, is well acquainted

in that area which I described and has many friends up there. Of course, he has got an advantage in that way over us.

Q. Well, now, Mr. Dabney, how could a larger bank serve the community, even this growing industrial community about which you have been testifying, better than the two banks separately?

A. Well, let me think about that to give you an answer.

To the extent that size is of interest to our depositors, we would be of larger size; we would have a larger capital stock, surplus, and undivided profits. And to the extent that that influence, those corporations principally, we would have an advantage over the two banks of smaller size each before the merger.

Q. In competing principally, with what banks, Mr. [325] Dabney?

A. These out of town banks.

Q. Now, Mr. Dabney, I wish you would explain briefly to the Court the capital position of the two combining banks prior to the merger and why a combination of banks with those capital positions was considered advantageous to the community?

A. Prior to the merger, The First National Bank had a comparatively small capitalization in relation to its deposit position. Relatively speaking, its capital was smaller than the average bank that had those deposits. And The First National had been desirous of increasing its capital position, and had from time to time increased its capital position by increasing its capital stock and surplus through the earnings of the bank.

I wish to make it plain that the position of the First National was that of a strong bank. On the other hand, the position of The Security Trust Company for the size of its deposits, its capital position was much larger than the average bank with those deposits. And inversely stated, the deposits were small in the Security Trust Company in relation to its capital position.

Therefore, it was considered desirable both by the First National and by the Security Trust Company that the banks combine, with the result that the merged bank [326] had a capital stock and surplus and undivided profit position that somewhat

better corresponded to its deposit position. They blended in well. They complimented each other. And that was a strong motivating force in the merger.

Q. In your opinion, Mr. Dabney, was that resulting capital position in accordance with sound banking practices?

A. Yes. That was one of the main reasons the Comptroller of the Currency approved the merger. Regulatory authorities like to see banks well-balanced. They like to see banks with adequate capital position. They like to see banks with adequate deposit positions. They like to see the overall position of the banks in good balance.

Mr. WILLIAMS. Your Honor, I object to Mr. Dabney telling the reason why the Comptroller of the Currency approved the merger unless he knows it.

The WITNESS. I said that is what I thought.

The COURT. Overruled.

By Mr. LISLE.

Q. Mr. Dabney, there has been some reference made by other witnesses to the fact that The First National could have increased its lending limit simply by transferring undivided profits to surplus. Would that have improved its capital resources in any way?

[327] A. It wouldn't have changed the capital resources a dollar.

Q. Would that have corrected the situation where the capital resources were small in comparison to total deposits and total loans?

A. It wouldn't have changed it at all.

Q. In your opinion, is the fact that The First National-Security now has a lending limit of $500,000 of benefit to this community?

A. Yes, I think it is.

Q. In what way?

A. The bank not only has the legal limit much higher than The First National prior to the merger, but loans aren't determined altogether by a bank's legal limit. The legal limit is the maximum fixed by law beyond which loans cannot be made. The legal limit is only one factor with respect to the amount of a loan that a bank can make.

Another factor, and perhaps in some cases, many cases, a more important factor, is the bank's ability to lend.

Prior to the merger, the Security Trust Company could make unsecured loans up to twenty percent of its capital and surplus, up to thirty percent on a secured basis. But the Trust Company had never made a loan that size. It [328] would have been an imprudent thing in the opinion of the management of the bank to make any such loans of that size, although that was the legal limit. The legal limit was all right, but the ability of the bank to lend did not extend to the legal limit.

Q. Now, the proposed merger, proposed by Mr. Porter in 1957, was not consumated?

A. No, it was not.

Q. Now, when did negotiations reopen, approximately, for the merger of the two banks?

A. They opened in the early part of 1960.

Q. Now, in connection with that, did the two banks seek independent outside advice with reference to the merger?

A. Yes. The matter was considered first upon the re-initiation of the merger talks on a very limited and very unofficial basis. And those parties who were speaking for the two banks decided that it would be advisable in order to achieve a merger or try to that would be eminently fair to the stockholders of both banks that we should seek the advice and counsel of a large bank necessarily situated in some metropolitan area that would advise us, would investigate our situation and would advise us upon what basis that large bank though a merger should be made, if it were desired by the two banks, on a fair and equitable basis to [329] the stockholders.

Q. Without going into the details of the recommendations, you did secure recommendations from what sources?

A. Both of us agreed that—

The COURT. Now, just answer the question, please.

The WITNESS. Sought it from the Morgan Guaranty Trust Company in New York.

By Mr. LISLE:

Q. Following that, were the details of the merger worked out and agreed to?

A. Yes.

Q. And finally approved?

A. Yes. By the Directors and by the shareholders.

Q. And by the Comptroller of the Currency?

A. By the Comptroller of the Currency thereafter, yes.

Q. It became effective March 1, 1961?

A. Yes.

Q. Now, Mr. Dabney, with reference to the competition for the various facets of banking, how do the banks compete for demand deposits?

A. They advertise their services in newspapers, television, radio, by pamphlets, and all the general media available for advertising purposes, also by personal contacts [330] upon prospects.

Q. Is the service which the bank renders of any importance in that regard?

A. Oh, yes. It is well known that a bank has to render its customers good service in order for them to be satisfied customers.

Q. Were the other commercial banks in Lexington competing with First National and Security prior to March 1, 1961?

A. Yes.

Q. Have they been competing since?

A. Just the same. Competition has gone on, it seems to me, just about the same after the merger as it did before the merger.

Q. Has any study been made, Mr. Dabney, showing the comparison of the figures between December 31, 1960 which was the last call date that the banks were separate and December 31, 1961 after ten months of combined operation?

A. I have before me a paper——

Q. That is Defendant's Exhibit Number 35?

A. It has 35 written on here, yes. I guess that is what it is.

Q. Is that entitled "Comparison of dollar amounts [331] and percentages of all Lexington banks per published statements for years ended December 31, 1960 and 1961"?

A. Yes.

Mr. Lisle. Does the Court have that?

The Court. Yes, I have it.

By Mr. Lisle:

Q. Now, as of December 31, 1960, what percentage of the total resources in the banks in Lexington was held by The First National, by The Security Trust, and by the two banks as a total?

A. What percent?

Q. Yes. Of the total resources at the end of 1960?

A. As shown on the fourth line there, I believe it is, opposite the word "sub-total", as of December 31, 1960, the First Security, or the two banks separately, had 52.7 percent of the dollar volume of deposits.

Q. Total resources, you mean?

A. Total resources, yes. Excuse me.

Q. And what percent of the total resources did they have one year later?

A. They had the lesser sum of 51.51 percent.

Q. That was a decrease in the percentage of the total of how much? That is in your last column.

A. That was a decrease of 1.19 percent.

[332] Q. Were the other banks in Lexington, or most of them, able to increase their total resources during that period of competition with the combined bank?

A. Yes. The Citizens Union increased their .49 percent; Commerce .26; and Central .80.

Q. How much increase in dollar volume in the Citizens during that period?

You will find that increase in the third column, the dollar volume.

A. The dollar volume?

Q. Yes.

A. That is the increase amount?

Q. Yes.

A. $5,049,369.

Q. And that was a percentage of increase for Citizens Union over what it had at the beginning of the year of how much? That is in the next column.

A. 18.11 percent.

Q. And the Bank of Commerce, what was its dollar volume of increase, and how much did its business increase in percentage?

A. Its dollar volume of increase was $3,643,019. The percent of increase was 17.16 percent.

[333] Q. And the Central Bank?

A. Central Bank, the dollar volume of increase was $3,708,775; and the percent of increase was 24.84 percent.

Q. Was the percentage increase of each of those three banks, the Citizens Union, Commerce, and Central, greater than that of The First Security and National?

A. Yes.

First National Security was 12.24. And each of those three was in excess of that. Central's is double the amount.

Q. I won't go through the other charts there that show deposits, loans, and so forth. But what, Mr. Dabney, would that indicate to you as to the ability of these other banks in Lexington to successfully compete with the First Security National?

A. Well, there are the facts and figures to show that they are successfully competing with the First Security National.

Q. Mr. Dabney, some reference has been made to the apprehension over the long pull and to the effect that they have not felt the impact of the merger yet. Is there any plan to do anything different, to take any business away from these other banks in Lexington, than what has been done before?

[334] A. Not at all. The normal competitive situation will continue in the future the same as it has in the past.

Q. Now, I would like to return very briefly to this matter of trust assets. Is there any competition for trust assets after they have been placed in trust or in an executorship with one of the commercial banks?

A. None at all.

If a man dies and has his estate administered by one of the banks, why, there it is, and the bank administers it. There is no competition over that after the bank qualifies.

Q. The competition, then, is for future business and not for this business that is existing?

A. That is exactly correct.

Q. Now, with reference to certain trust assets as it has been designated that are now being administered by the First Security National Bank and Trust Company, reference has been

made to the capital stock of the Lexington Herald-Leader. That was held by Security Trust Company prior to consolidation and now by the First Security?

A. Yes.

Q. For whose benefit is that stock held and for whose benefit is it administered; not by name, but by designation?

[335] A. The stock is held by the fiduciary, executor and trustee, and a separate trust as to a small number of shares, of the Security Trust Company. The legal title under the law—under the law the legal title to a trust estate is held by the trustee in the name of the trustee, but for the benefit of the estate and the beneficiary, and to be administered as the will directs it should be administered if it be a testamentary estate, as nearly all that stock is.

Q. Mr. Dabney, did the Security Trust Company or you prior to the consolidation during the period in which the Security Trust Company held that stock ever attempt in any way to dictate or interfere with or control the management or editorial policies of that paper?

A. We did not. Not at all. In no way did we.

Q. Since the combination of the two banks became effective, the consolidation, has the First Security or you ever made any such effort?

A. None whatever.

[336] Q. Reference has also been made to the number of parcels of real estate which are said to be in the two trust departments, and now the Trust Department of the First Security. Has a study been made to show the different banks in which the tenants of that real estate have their accounts?

A. Yes, we have made a study to show all those figures.

Q. Do you have that chart before you?

A. Yes.

Mr. LISLE. That is Defendant's Exhibit No. 77.

The COURT. I expect it would be advisable to have these tabbed. You can take them off or correct them, because the old tabs don't correspond to the present number.

Mr. ODEAR. We will attend to that, Judge, at the closing of court today.

The COURT. You may continue.

By Mr. LISLE:

Q. I now direct your attention first, Mr. Dabney, to the tenants of the First National. How many of those were there in total number?

A. This table shows that the total of the first column is 53, meaning that there were 53 checks drawn by tenants——

The COURT. He asked about First National, not the total of all of them.

The WITNESS. There were 53 checks drawn on different [337] banks that were payable to the First National.

The COURT. Answer as to how many were drawn on the First National.

The WITNESS. I didn't understand you. What is the question?

Mr. LISLE. Maybe I can start over again, Judge.

The COURT. I don't see how you can make it any plainer, if he will just listen to you.

By Mr. LISLE:

Q. I asked first the number of pieces of business property handled by the First National Trust Department covered by these rent checks—that is, the total of your first column.

A. That is 53 in number.

Q. Of that 53, how many rent checks were drawn on the First National?

A. Fifteen.

Q. How many on the Security?

A. Five.

Q. How many on the Citizens Union?

A. Eleven.

Q. Central?

A. Seven.

Q. The Bank of Commerce?

A. Six.

[338] Q. The Second National?

A. Two.

Q. And out-of-town banks?

A. Seven.

Q. Out of 53 rent checks drawn in payment of rent on business properties held in the Trust Department of the First Na-

tional, what percentage of those checks were drawn on the First National?

A. 28.3 percent.

Q. Now I go to the Security Trust Company tenants. There were how many rent checks drawn in payment of rent on Security Trust Company tenants?

A. There were 71.

Q. How many of those were drawn on the Security Trust Company?

A. Six.

Q. What percentage of the total?

A. 9.7 percent.

Q. How many of those were drawn on the First National?

A. 23.

Q. What percent?

A. 31.9 percent.

Q. Does that indicate anything of significance, Mr. Dabney, as to whether or not the trust departments of [339] these two banks coerced their tenants to do business with the commercial departments?

A. They did not.

Q. Did the Security Trust Company do it before the consolidation?

A. They did not.

Q. Have they done it since?

A. They have not.

Q. Do they intend to do it in the future?

A. They do not.

Q. Would it in your opinion be a breach of their fiduciary duty to do so?

A. Yes, it would.

Q. Why?

A. When the bank qualifies as trustee, say, of an estate that holds a piece of real property in trust, it takes an oath faithfully to do its duty. Its duty is to the trust, to the beneficiaries of the trust—not to itself individually.

To promote its own interests against the interests of the beneficiaries of the trust would be a breach of faith and a breach of its sworn duty.

Q. Mr. Dabney, the statement has been made in this case that the consolidated bank has the power to raid any other banking institution in Lexington if it wanted to. I [340] will ask you to state whether or not in your opinion such a position is well-founded?

A. It is not.

Q. And why not?

A. Because the character, integrity and honor ——

Mr. WILLIAMS. Just a moment, Mr. Dabney. Are you reading from something that is in the record?

The WITNESS. I am reading from some notes that I have. Do you want to see them?

Mr. WILLIAMS. I wonder if I might ssee a copy of them.

The WITNESS. All right, sir.

Mr. LISLE. Who made those notes, Mr. Dabney?

The WITNESS. I did.

The COURT. Go ahead.

The WITNESS. Mr. Williams, I prepared this memorandum to aid me in testifying. When you said was I reading from it, I should say that I don't know that I was reading it word for word; but I would be prompted in my mind to what I was going to testify.

Mr. WILLIAMS. That is all right, sir.

The COURT. Go ahead.

The WITNESS. The honor and character and integrity of the management and the board of directors of First Security, [341] and its two immediate antecedent banks, are such as to prohibit a malicious action of this kind.

Two. It is well recognized by all bankers that it is wise and beneficial to all banks in a community for every bank therein to operate satisfactorily and profitably, and that any public doubt, suspicion, or apprehension concerning any particular bank is dangerous to all other banks; and that a public lack of confidence—though I should better phrase it a lack of public confidence—in any one bank may well be injurious to any and all of the others.

Three. Were First Security to offer loans at lower rates of interest to borrowers generally than Citizens Union, for instance, and were the offer of such loans to be widely accepted,

First Security would soon deplete its lendable funds and be unable, if it were willing, to increase its own loans to the point of satisfying such new borrowers from the Citizens Union.

Furthermore, borrowers at First Security, upon learning that it was making loans at lower rates of interest to customers of another bank, would immediately demand for themselves similar loans at lower rates, and thus there would be created widespread dissatisfaction among the customers of First Security.

Growing out of this situation, First Security itself [342] would be materially damaged.

Four. Banking is a closely regulated business. If the regulatory banking authorities saw that any action by one bank of size against a smaller bank were to be to the material detriment of the smaller bank, such banking authorities would move immediately to correct the situation, either by seeking a revocation of the charter of the bank that caused the trouble or in instituting proceedings for the revocation of its charter.

I would say that the First Security would not, if it could—and could not if it would—take the action that an officer of the Citizens Union said here yesterday in his testimony.

By Mr. LISLE:

Q. Then you feel that his apprehension was wholly unfounded?

A. Yes—even fanciful.

Mr. LISLE. You may ask.

Cross-examination by Mr. WILLIAMS:

Q. Mr. Dabney, it is possible, is it not, dealing with the tenants of a property held in trust by a bank, to attempt to influence them very properly to do business in the commercial part of your bank?

A. Properly, yes.

[343] Q. You think enough of your bank to try to influence your tenants to do their commercial business with your bank, do you not?

A. Any action that meets the standard of character and integrity and duty as sworn by the bank in qualifying is all right and generally accepted so.

Q. You were very successful without breaching your fiduciary duty, were you not?

A. There are the figures to show how successful or how unsuccessful we are—or were.

Q. Do you know how many of the 53 renters who paid their rent to your bank have other types of accounts in your bank?

A. Well, the checks for rent are customarily drawn on the tenants' demand deposit accounts in whatever bank the demand deposit account is in.

Q. Aren't there a number of business enterprises in Lexington that have home offices in other cities?

A. Yes.

Q. And isn't it a practice of many companies to pay rent through a central office rather than the different branches paying rent?

A. Well, of the 71 checks that the Security Trust Company got as shown by this table, 22 came from outside of [344] town—if that answers your question.

Q. Do you know what percentage of those 22 maintain other types of accounts in either your bank or in some other banking institution?

A. I don't have that information.

Q. So that a rent check could be drawn on another bank and the drawer of that check could also have a deposit in either your bank or another bank in Lexington, could it not?

A. He could.

Q. As a matter of fact, that is often the case, is it not?

A. I wouldn't say so; I don't know.

Q. Mr. Dabney, in connection with the relative increase in business that the competitors of First Security have been able to obtain since the merger went into effect, did you not expect some temporary attrition of business as a result of the merger?

A. I would say that it generally happens. How much you would expect, I have no way of knowing—no way I know.

Q. That is rather a normal thing, is it not?

A. Yes.

Q. Have you not indicated to other people that you expected that there would be a temporary attrition in business as a result of the consolidation?

[345] A. I may have.

Q. In your judgment has the order of the Court separating

the two institutions to a substantial degree had an effect upon the business conducted by the merged institution?

A. Not too materially. It has affected it.

Q. So there is an explanation for what may be termed a temporary situation, is there not?

A. To the extent I have mentioned.

Q. Isn't it your purpose in merging to do away with that temporary attrition and pick up more business later on?

A. Only on a normally competitive basis. It has always existed prior to the merger; it has existed since the merger; and we hope it will exist in the future.

Q. You wouldn't have merged if this temporary condition—if you had thought at least that it would continue for a great period of time, would you?

A. I don't know how long it will continue.

Q. My question is: You wouldn't have merged if you thought this attrition in business would last very long, would you?

A. That gets into a guessing game on what we would have done or wouldn't have done. There are many more factors involved in a merger than just that factor. That is one factor, and it should be given proper weight.

[346] Q. Mr. Dabney, I would like to refer to the exhibit you testified about earlier—Defendant's Exhibit 74, that large chart. Do you have that in front of you?

A. I have two of those, I think. Are you talking about deposits?

Q. Do you have that before you now, sir?

A. Yes.

Q. I wish you would examine that chart and see if it does not state or does not indicate that, during the period 1940 to 1961, First National had an average of 19 court appointments, with an average dollar value of $1,412,861.

A. That is correct.

Q. During that period First National just started, did it not, to actively go into the trust business? Didn't you testify that it started about 1940?

A. Yes.

Q. And does not that chart show that Security Trust had an average of 16.5 appointments, with an average dollar volume of $1,445,640?

A. $1,345,000 is the figure.

Q. So that, based upon the average, there is not a great deal of difference between the respective positions of the two institutions during that period of time.

A. That's right.

[347] Q. Despite the fact that Security was a much larger trust department during all of that time, and that First National just started into the field, as you say, actively in 1940.

A. They started in 1940.

Q. So the chart does not reflect the true picture, does it, of the total trust business occupied by the two banks?

A. This is the business that they acquired in that period—not the business that they started with, but the business that they acquired in that period. That is all the chart purports to do.

Q. Would you look again at the chart, Mr. Dabney, and see if it does not reflect that in 1947 Security had 3.69 percent as the number of appointments; yet the dollar volume amounted to 49.74 percent?

A. What year is that?

Q. 1947.

A. That is not the figures I see here, Mr. Williams—at least I don't think so.

Mr. MITCHELL. In 1947, the percentage of appointments—

The WITNESS. I thought he meant the number of appointments.

By Mr. WILLIAMS:

Q. The percentage, Mr. Dabney. Doesn't it show that [348] in 1947, under Percentage, the total number of appointments——

A. It shows 3.69 percent.

Q. And the dollar volume of 49.74?

A. Yes.

Q. So that with relatively fewer numbers in appointments, the dollar volume is considerably greater, was it not?

A. In that year.

Q. Would you say that that is an indication that corporate fiduciaries, while they may have relatively few in numbers in appointments, have a relatively large amount in dollar volume?

A. Compared with what?

Q. Compared with individuals.

A. The figures are there for the individuals. We can compare them if you want to.

Q. Based upon that figure that we just referred to, wouldn't that be the indication?

A. Well, the very next year—you quoted from 1947—the very next year the volume of the Security Trust Company decreased from 49.74 percent, which you mentioned, to 11.51 percent. And in 1949 it decreased to 4.14 percent in dollar volume.

In other words, in 1949 the dollar volume that the Trust Company got was less than 10 percent of the dollar volume it got in 1947.

[349] Q. Mr. Dabney, look at the averages, would you not, for Security Trust?

A. What column is that?

Q. The right-hand column.

A. Yes, the last column on the right.

Q. That reflects, does it not, that, while in terms of numbers Security Trust only had 3.01 percent, in dollar volume it had 20.60 percent?

A. That is right; that is the figure.

Q. Mr. Dabney, the chart you have before you only covers four types of trust business, does it not?

A. I presume I am right in saying that it covers all of the fiduciary business where the fiduciary qualified in the County Court here—which is our Court of Probate, if I may explain that.

Q. That covers administration, testamentary trust, committee, and guardian, does it not?

A. It covers the services of the fiduciary as executor, as administrator, as administrator with a will annexed, as trustee, as guardian, as committee.

Q. Your bank performs a lot of other trust functions, does it not, in addition to those?

A. Yes.

Q. Such as voluntary trusts?

[350] A. Yes.

Q. And you have quite a number of those, do you not?

A. Yes.

Q. And the value of those is quite substantial, is it not?

A. It is substantial, yes.

Q. And custody with will annexed?

A. I don't know what you mean by "custody with will annexed." That is a new term to me.

Q. "Custody W.I.S." Both the merged institutions had a number of those, did they not?

A. Custody accounts. We have custody accounts.

Q. And the dollar volume of those accounts was substantial, was it not?

A. I don't know what you mean by substantial. I would say they were substantial. I don't know what you mean.

Q. Well over a million dollars, wouldn't you say?

A. Well, I would be guessing if I gave any figure. They can be ascertained.

Q. Both banks have trust business in the field of agencies and safekeeping, do they not?

A. Yes.

Q. That is not reflected——

A. No; this is just the court qualifications here.

[351] Q. And you have a substantial number of those accounts, do you not?

A. Yes.

Q. Escrow?

A. Some escrow; not a great many.

Q. And bond and debenture issues?

A. Do you mean bond and debentures?

Q. Yes.

A. There is a very limited business in Lexington on corporate bond services.

Q. Paying agency—do you have that type of business?

A. A few.

Q. Transfer agency?

A. Yes, a few of those.

Q. Registrar?

A. The same as the other.

Q. What I am trying to show, Mr. Dabney, is that in addition to the type of business set forth in that chart, both insti-

tutions conducted a sizeable amount of trust business, did they not?

A. They did. This is a comparative chart as among the banks, first; and as between the banks and individuals.

Q. And only a limited part of the total trust business conducted by the bank?

A. That is exactly right.

[352] Q. Mr. Dabney, only banks and trust departments of banks advertise or hold themselves out to the public in the Lexington area as conducting a trust business, do they not?

A. That's right.

Q. I think you testified earlier that there was a great need in the community for a corporate fiduciary, and that resulted in the formation of the Secretary Trust.

A. In 1886.

Q. That need continues, does it not?

A. I think it does.

Q. And it is a need that individuals cannot be substituted for?

A. Well, an individual can qualify as executor the same as a bank. An individual can qualify as administrator the same as a bank. An individual can qualify as administrator with a will annexed and as trustee and as committee and guardian just the same as the corporate fiduciary can qualify.

Q. Why did the community think it necessary in 1887 to set up a corporate fiduciary?

A. For the reasons I stated. Do you want me to repeat that?

Q. Yes.

A. The business community in those days—this is 1866; I presume you know I was hardly available to testify about [353] conditions in 1886—but as I understand them and have always understood them, the businessmen in the community thought that it would be desirable for the community to have available the services of a corporate fiduciary. And for that reason with practically, I think, unanimous accord among the business community, the Security Trust and Safety Vault Company was organized and was put in business—to render corporate fiduciary services to this community.

Q. Then the need still exists for corporate fiduciary services in this community, does it not, Mr. Dabney?

A. In my judgment it does.

Q. What are some of the special characteristics of a corporate fiduciary?

A. A corporate fiduciary has continuous existence so that if a corporate fiduciary is named as executor in a will, the testator knows that when he dies the executor named in the will will be available to serve.

In addition to that, a corporate fiduciary, I think it is true, has knowledge about the handling of property and buying and selling real estate, the leasing of real estate, the buying and selling of securities, which any particular individual may or may not have. The individual may have it; he may not have it. But a corporate fiduciary may be relied upon to serve with that skill and knowledge.

[354] It is for that reason that some people name corporate fiduciaries. I presume that is true—I think it is.

Q. And they provide safekeeping for securities and various things that are not as convenient for an individual to take care of?

A. Not as convenient, but an individual can do it. He can handle securities for another individual if the other individual wants him to.

Q. Does a corporate fiduciary offer group judgment and specialized skills in different aspects of corporate business?

A. Yes.

Q. And conducts business for corporations that individuals normally do not do, does it not?

A. What do you mean by conducting business for corporations?

Q. It handles affairs of corporations in the trust department of a bank and provides a number of services for corporations that individuals do not provide, does it not?

A. Well, I think an individual could provide any of those services.

Q. They generally do not?

A. I think it is fair to say that there are not many businesses that are operated by fiduciaries—that is, the [355] operation of a business. The corporate fiduciary will frequently hold

the title to property in a trust and lease it to a company that will operate a business in that property.

Q. Mr. Dabney, a corporate fiduciary serves as a transfer agency, a paying agency, pays out dividends to individuals, and a lot of things like that in behalf of a corporation, does it not?

A. There is a limited amount of that business in this community, yes.

Q. But that is the type of business an individual doesn't normally engage in in Lexington?

A. That is right.

Q. Mr. Dabney, I think you testified earlier that you thought as a result of the merger you would be better able to compete with some of the larger banking institutions in Louisville and Cincinnati?

A. Louisville and Cincinnati, particularly.

Q. Did you not in your application to the Comptroller indicate that you thought you would be able to better compete with those larger institutions in the trust field?

A. I forget just what—I will refer to it if you want me to and see what the application says on that point. I don't remember exactly what it says.

Q. Do you recall that the Defendant, in response to [356] interrogatories served by the Government, identified two banks—that is, Citizens Fidelity of Louisville and Central Trust Company of Cincinnati—as large banks from other financial centers who were active in the solicitation of trust business in the Lexington area? Do you recall that?

A. I expect it is in there. It may be. I am not able to remember everything in the application, if that is what you are asking me. But I think it is true. If it is in there, I think it is true. I think we are better able to compete with them.

Q. At this time, Mr. Dabney, I would like to show you Government Exhibit 105. Would you take a look at that document, Mr. Dabney, and read the heading of it?

A. "Citizens Fidelity Bank and Trust Company, Louisville, Kentucky," is at the top.

Q. What is the date?

A. The date is February 16, 1962.

Q. Who is it addressed to?

A. It is addressed to Mr. Larry L. Williams, Chief, Special Trial Section, Anti-Trust Division, U.S. Department of Justice, Washington, D.C.

[357] Q. And who is it signed by?

A. Signed by C. P. Ossman, Comptroller.

Q. Would you read the last sentence of that document, please?

A. "As a matter of policy, we do not solicit bank or trust business in the area served by our correspondent banks."

Q. I ask you is that bank a correspondent bank?

A. Yes.

Q. Your bank?

A. Yes.

Q. Now, Mr. Dabney, I would like to show you Government Exhibit Number 78.

(The document was shown to counsel for the Defendant, and then handed to the witness.)

Q. Do you have the document before you?

A. Yes.

Q. Would you identify the heading of that document?

A. "The Central Trust Company, Cincinnati".

Q. And the date?

A. January 19, 1961.

Q. Who signed that document?

A. It is signed by W. S. March, Vice President and Comptroller.

Q. Would you turn, Mr. Dabney, to the second page [358] of that document, please, and read for the record beginning with paragraph 5 in parentheses followed by "Q". Do you see that?

A. Yes.

Q. Would you read the rest of the document beginning at that point, please?

A. "The total number and carrying value of trust accounts."

That apparently is the question.

The answer: "On December 31, 1960, we had 2,686 trust accounts, with a total carrying value of $365,995,965.44."

Now, 6: "QUESTION: The number and carrying value of trust accounts which originate in Fayette County?"

"ANSWER: Of the above totals, one insurance trust with a carrying value of $16 originated in Fayette County."

Q. Thank you.

Mr. Dabney, doesn't the trust department of a bank keep accounts in the commercial department of the same bank?

A. It generally keeps any cash that it has on hand on deposit in the commercial department of the bank.

Q. Where the trust department is of a considerable size, that amounts to a considerable amount of money, doesn't it?

A. Yes. It varies, of course.

[359] Q. Yes.

A. From day to day.

Q. Well, in the case of First Security, the deposits placed by the trust department of the Bank in the commercial department are sizeable figures, are they not?

A. Well, it depends on what you mean by sizeable. I think they are sizeable.

Q. Would they be at times in excess of a million dollars, for example?

A. At times, yes.

Q. It is valuable to an operation of the bank to have deposits on hand so it can make loans, is it not?

A. Yes.

Q. So that in that sense, the operation of the trust department aids and helps the operation of the commercial department of the same bank, does it not?

A. Yes.

Q. Of course, you make money in the operation of a trust department when it becomes of a reasonably good size, do you not?

A. Well, there is no law requiring you to make money whether your trust department is small or large. But you have a better chance to do better if you have got a good department and substantial business, of course, like any [360] business.

Q. In fact, in 1960 earnings from the trust department of Security represented about 17 percent of its total, did it not?

A. I don't have those figures. But I will get them if you want me to testify from our figures.

Q. Do you think that is a reasonably accurate figure?

A. It may be.

Q. Do you know whether or not that was the second largest single—the largest source for earnings of Security Trust?

A. I haven't looked at the figures to determine that, if that is what you are asking me. But I will if you want me to.

Q. Does that sound reasonable to you?

A. Yes.

Q. Mr. Dabney, I believe you testified that Security did not actively enter the commercial field until about 1947.

A. That is correct.

Q. And from that period, 1947 to 1960, it was able to establish a rather sizeable commercial department, was it not?

[361] A. Well, I gave you the figures here.

Q. In your judgment, was the fact that you had a rather large trust department a big aid in building up your commercial department?

A. Well, we had a trust department when we started. We had a trust department at the end of—what was it?—thirteen years.

Q. My question was: wasn't the fact that you had a rather large trust department a considerable aid to the bank building up its commercial department?

A. Well, the bank building up its commercial department came from new business, not from old business. It already had the old business. It came from new business.

Q. I understand, Mr. Dabney. But my question is: did not the existance of a sizeable trust department serve as a considerable aid in building up your commercial department regardless of whether it is old or new business?

A. I would say no.

Q. Why?

A. Because I think it didn't.

Q. You have already testified, have you not, that a bank can keep on deposit in its commercial department sizeable sums of money. Isn't that a benefit to the bank?

A. Yes.

[362] Q. Your bank was well known in the community as a substantial trust company, was it not?

A. I think it was.

Q. Don't you think that that was an important factor in building up your commercial department?

A. Well, maybe I didn't get your question.

I thought you meant that the money that we had in the trust department in 1960 and from 1947 to 1960, say, contributed to the building up of the commercial department, which I will say that I didn't think so. That was the answer I gave.

Now state your question again. Maybe I didn't understand your question.

Q. Mr. Dabney, you had a lot of existing customers in your trust department?

A. Yes.

Q. Were you not able to convince a lot of those customers to also do commercial banking with you?

A. All we could.

Q. And you were quite sucessful, were you not?

A. I don't know how successful we were from that particular source. I know what the figures were from 1947 until 1960 in the commercial department, which we have stated here today.

[363] Q. Well, the fact is that in a relatively short period of time you were able to expand your commercial department so that it had twelve or thirteen percent of the commercial banking business in Lexington?

A. Yes. But I don't know how much of that expansion in the commercial department was derived from the trust department. Some I am sure was, but I don't know how much.

Q. What I am trying to get at, Mr. Dabney, is that having operated the trust department for many years and having a lot of accounts in your trust department, that was a material help to you in building up your commercial department, was it not?

A. Well, it came more in benefit from what people in the trust department, when they got distributions of money, would deposit in our commercial department. They did not have to. But many of them did. And that was an aid.

Q. Is it not true, Mr. Dabney, that when you had property for lease or rent, you were the first to know who might rent the property, and you could do your best to convince them to do business in your commercial department?

A. We could within the limits of propriety, which I have stated to you previously.

[364] Q. I understand. But you could influence them and try to convince them that it was to their best interest?

A. Well, there are the figures as to what happened. We have already stated those to the Court.

Q. I believe you testified that First National really became active and aggressive in the trust field in about 1940?

A. Yes.

Q. So that any percentage increase in business on the part of First National from 1940 would be quite tremendous, wouldn't it?

A. Do you mean increase in trust business?

Q. Yes.

A. Well, there are the figures; there they are.

Q. My question is that percentagewise it would be a tremendous increase, would it not?

A. Well, they started with hardly anything in 1940. Anything they got added to practically nothing was a large increase, of course.

Q. So that the percentage increases sometimes do not mean a great deal?

A. Well, I don't know how you want me to apply that to some other percentages about something else. That is [365] beyond my ability.

Q. Well, Mr. Dabney, you were asked on direct examination to testify with respect to a lot of percentage increases. And I am bringing this up to show that they may or may not mean a great deal. Would you agree with that?

A. I would rather you asked me about a particular percentage in a particular case. Then I will be able to have an opinion about it. If I have, I will be glad to express it.

Q. Mr. Dabney, in your judgment does the fact that First National had a very sizeable commercial department—was that of assistance to it in building up its trust business from 1940 to 1960?

A. Yes.

Q. The commercial department and the trust department go hand in hand and aid and strengthen each other, do they not?

A. I think they complement each other.

Q. Do they strengthen each other, in your opinion?

A. What do you mean by strengthen?

Q. I withdraw the question.

Mr. Dabney, on direct examination you mentioned the fact that you considered your bank to be in competition with insurance companies in the mortgage field, did you not?

[366] A. Yes.

Q. What is the average loan in the mortgage field in your bank; do you know?

A. You are asking me what is the average length of mortgage loans that we make?

Q. Yes.

A. You mean now or prior to the merger? When do you mean?

Q. Prior to the merger.

A. Prior to the merger?

Q. Yes.

A. The Security Trust Company made most of its mortgage loans with maturities up to ten years. It made some beyond ten years where the needs of the borrower seemed to dictate a situation of that kind.

Some of those loans were made for a period of ten years, but they would be set up on a, say, fifteen-year pay out basis. That is, the payments over the ten years would be on the basis that the loan would be retired in full with those same payments over a term of fifteen years.

Most of our mortgage loans were made on the amortization plan whereby the borrower would make a payment every month enough to cover the interest for the month, and then an additional credit on the principal. That would [367] retire the loan at its maturity or on the pay out basis that it was set up on.

Q. Mr. Dabney, when you make a five-year loan, if the bank chooses to renew that loan, it can increase the interest at that time, can it not?

A. It can increase the interest whenever the loan is due.

Q. It is due in five years?

A. The loan is due, period.

Q. And if money is in tight supply, the bank can call it in and not renew it? It has that right, does it not?

A. The bank doesn't call the loan if it matures. The loan matures according to its terms. If it matures and the borrower hasn't made it all, he can either pay it off, or if interest rates are higher he may have to pay more, or if interest rates are lower he would probably get it at a lower rate.

Q. Mr. Dabney, the great percentage of the loans made by Security Trust Company in 1960 were one-year or under as far as maturity is concerned, were they not?

A. Not mortgage loans. If you are talking about mortgage loans, no. We made comparatively few mortgage loans due in six and twelve months. We made some, but not too many.

[368] Q. Well, would you be surprised if I told you that in 1960, Security Trust had $286,804 in loans with under one-year maturity?

A. Mortgage loans?

Q. Yes.

A. No, I wouldn't be surprised. But that is a very small percentage of the overall portfolio.

Q. Would you be surprised if I told you that that was the largest—that you had more money in that category than any other?

A. I think that is wrong.

Let me see if I understand your question.

I understood your question to be that in 1960 or 1961, whenever it was, we had, say, 300,000 mortgage loans due in one year, and that that was greater than the other mortgage loans that we had.

That is what I understood you to ask.

Q. No, that is not the question. The question was that in 1960 Security Trust had more money in mortgage loans of under one year maturity than it had in any other category of maturity. I ask you whether or not you would be surprised at that figure.

A. I think that is wrong.

Q. Mr. Dabney, would you look at page three of [369] Government's Exhibit Number 65. Do you have that before you?

A. Page three, yes.

Q. That document shows, does it not, that Security had a considerable volume of loans on real estate with maturities under one year, some under two years, and three years, four years, and five years?

A. Yes.

Q. And in the category of under one year maturity, you had $260,804 worth; is that correct?

A. That is right.

Q. Do you know the average length of a mortgage loan by insurance companies?

A. I don't know the average. They make loans frequently for fifteen years, twenty years, twenty-five years.

Q. Isn't it true they are usually long-term mortgage loans?

A. Yes.

Q. So that in the field of short-term mortgage loans, you are really not in competition with insurance companies, are you?

A. Well, I don't consider a ten-year loan to be a short-term loan. It is not much shorter than a fifteen-year loan.

[370] Q. Well, under ten years?

A. How much under?

Q. Well, say five years, for example?

A. Five years?

Q. Yes.

A. Well, I can see obviously a distinction between a five-year loan and a loan that is due in fifteen or twenty or twenty-five years. I see that distinction.

Q. Do you know of any insurance companies making a loan on real estate under fifteen years in Lexington?

A. I don't recall any now. There may have been.

Q. None to your knowledge?

A. None to my knowledge, no.

Oh, yes, I do. I got one myself.

Q. What kind of property?

A. I got it from the Union Central Life Insurance Company. It was set up on a fifteen-year pay-out basis. And I was surprised to learn at the end of the tenth year that it was due. It is over here of record in the Court House.

Q. Mr. Dabney, in your judgment, isn't that rather infre-

quent, to say the least, for an insurance company to grant a loan on real estate for fifteen years or under?

A. It is not unusual for them to grant it for fifteen [371] years.

Q. Well, under fifteen years?

A. Well, I thought it was. And then I remembered I had one. How many others they have got here I don't know.

Q. That is the only one you know of; is that correct?

A. That is right. I knew about that one when they told me it was due.

Q. Do you have any over fifteen years? I mean does Security Trust have any loans over fifteen years?

A. I don't think we do.

Q. Do you know how many you have over ten?

A. Not a great many.

Q. Would one out of 86 be about the right figure?

A. It might be. I don't know.

Q. Mr. Dabney, turning now to savings and loan associations, the only lending these types of institutions engage in is in the field of real estate mortgage, isn't that correct?

A. Yes.

Q. Aren't they usually of very long maturity periods?

A. I would say fifteen years more or less. Maybe twenty. [372] They are somewhere in that area.

Mr. DAVIS. If the Court please, might we suggest a brief recess. I think Mr. Dabney would like a few minutes' rest.

The COURT. We will take a fifteen-minute recess at this time.

(Whereupon, a fifteen-minute recess was taken.)

[373] The COURT. You may proceed.

By Mr. WILLIAMS:

Q. Mr. Dabney, I would like to show you at this time a couple of pages from a deposition taken in this action of Mr. Miles, and I would like for you to read a portion of that. Then I want to ask you some questions about it, please.

Mr. LISLE. How many questions, Mr. Williams?

Mr. WILLIAMS. The questions I intend to ask are beginning with Question 60 on page 317, and ending with the answer to Question 69 on page 318.

By Mr. WILLIAMS:

Q. Mr. Dabney, do you have that document before you, sir?

A. Yes.

Q. Would you read beginning at Question 66 on page 317 and continue through the answer to Question 69 on page 318, please.

The COURT. Is that his own deposition you are submitting to him?

Mr. WILLIAMS. No, your Honor; it is the deposition of Mr. Miles. But I want him to read it and then I want to ask him some questions.

A. Did you say begin with Question 66?

[374] By Mr. WILLIAMS:

Q. Yes, sir.

A.

Q. 66. Would you describe, in detail, sir, the terms that you regularly give with respect to residential loans?

A. In our bank?

Q. 67. That's right.

A. Well, for a long time, as I said earlier, we have tried to hold to a five-year maturity. Many of these loans, of course, have been new. We have felt that there was some element of liquidity in making a short-term loan. We felt that it was not feasible for a commercial bank to attempt to compete with the very long terms provided by Government-guaranteed loans, and provided by other institutions that do not have some liquidity problem."

Q. Excuse me; doesn't that read "same liquidity problem?"

A. "Does not have the same liquidity problem."

Q. I think you said "some." Go ahead.

A. All right.

Q. 68. Would that involve savings and loan associations?

A. Yes.

[375] Q. Excuse me; doesn't the question read, Mr. Dabney, "Would that include savings and loan associations"?

A. That's right. And then the answer is, "Yes, I would say

that they don't have the liquidity problem that a commercial bank has."

Q. 69. You have a particular commercial situation, I gather, that requires you to stay close to short-term maturities?

A. That's correct.

Q. Mr. Dabney, do you agree or disagree with that statement as far as the Security Trust Company was concerned?

A. Prior to the merger?

Q. Yes, sir.

A. Our situation, Mr. Williams, is very different from the situation of the First National. I don't know, but may I assume that Mr. Miles was talking about the First National? Is that right?

Q. Yes, sir.

A. I am talking about the Security Trust Company.

Q. That is the question.

A. The Security Trust Company had a much smaller commercial loan portfolio in proportion to its size than the First National had prior to the merger. The Security Trust Company had a higher proportion, I think, of savings accounts [376] than the First National, as I remember. The Security Trust Company had a larger capital structure than the First National had in proportion prior to the merger.

Now, it was for that reason that we at the Security Trust Company thought it was good banking policy to make longer loans, and that was fully justified and we were never criticized by the banking authorities for following that practice.

Q. Mr. Dabney, you are the present chairman of the board of the merged institution, are you not?

A. Yes.

Q. Is the policy of the merged institution any different from the policy of the First National as stated by Mr. Miles?

A. Well, I would say it is a blending of the two positions of the banks prior to the merger rather than adhering to the policy strictly that the First National used to follow, or the policy that the Security Trust Company used to follow.

Q. Mr. Dabney, since a commercial bank has a considerable

amount of demand deposits, it by necessity has to keep a high degree of liquidity?

A. In proportion to its demand deposits.

Q. And aren't the demand deposits of your bank in the neighborhood of 75 percent or more of the total deposits?

[377] A. Now let me get the figures, if I may.

Q. Do you think that is a reasonable estimate?

A. It may be. I haven't got the figures in my head, so I can't answer the question. I will get them for you if you want me to.

The COURT. You needn't take up any time talking about something he hasn't asked you about. Let's move on.

By Mr. WILLIAMS:

Q. Mr. Dabney, would it be a correct statement to say that savings and loan associations are in the market primarily for long-term mortgages secured by real estate?

A. Let's say fifteen or twenty years.

Q. Or more?

A. Maybe more.

Q. Mr. Dabney, in the field of loans made by small loan companies, is it not true that under the law of the State of Kentucky, until quite recently the maximum that a loan company could make to an individual was $300?

A. Yes, that's right.

Q. And it is only recently that that has been increased to $800?

A. That's right.

Q. I believe you testified that the average loan of your bank—that is, the Security Trust—is well over that [378] figure?

A. The average; but that didn't mean that we didn't have a lot of them that were in competition with the $300 limit.

Q. Do you know what the rates charged by small loan companies is as compared with commercial banks?

A. It used to be 42 percent—3.5 percent a month. It may have been changed when the law was changed. Perhaps it was changed, depending on the amount of the loan.

Q. Do you think a man who is a good credit risk, with a good credit standing, would pay 42 percent on a loan when he could get it from a bank——

The COURT. How do you know what he would pay? Some of them would pay 120 percent. I believe you are just wasting time asking that.

By Mr. WILLIAMS:

Q. Mr. Dabney, the fact is, there is a tremendous difference between the charges in the small loan field between a commercial bank and a small loan company?

A. That is the reason we have converted our bank——

The COURT. Just answer the question.

The WITNESS. Yes, there is a difference—a big difference.

[379] By Mr. WILLIAMS:

Q. Mr. Dabney, turning now to correspondent banking, how many correspondent banks does the merged institution presently have—that is, accounts with?

A. I don't know.

Q. Would 58 to 62 be about the right figure?

A. That sounds high to me.

Q. As I understand your testimony, one of the purposes of the merger was to better equip the merged institution to go out for more of this type of business.

A. Yes, sir, in competition, I said, principally with Louisville and Cincinnati, as well as the other larger cities.

Q. You would be in competition in that field, would you not, with those banks in Lexington who also have accounts in correspondent banks?

A. I don't know but one, I said, that has such account. We would be in competition with them. We would be in competition with the rest of them if they wanted to get into the business.

Q. Is the acquiring of a considerable number of accounts, correspondent balances, very valuable to a bank?

A. Is it what?

Q. The acquiring of a considerable number, and dollarwise, of accounts in correspondent banks very important to a [380] bank?

A. Yes, sir.

Q. You obtain considerable sums of money on deposit that you can lend out, do you not?

A. We obtain whatever they keep on deposit.

Q. You consider that a considerable advantage, do you not, having more and more correspondent bank balances?

A. We would be glad to have a lot more.

Q. It puts you in a better competitive position, does it not?

A. With the banks we are competing with.

Q. Mr. Dabney, the capital structure of a bank can be increased by several different means, can it not?

A. Yes.

Q. You can sell stock for one thing, can't you?

A. Yes, sir—if you have it for sale and if the public will buy it, you can sell it.

Q. And you can convert undivided profits into the capital structure of a bank?

A. If you have undivided profits, you can.

Q. In fact, you did that in this recent merger to increase your capital structure, did you not?

A. Absolutely.

Q. So that there are means other than merger to [381] increase the capital structure of a bank.

A. That's true.

Q. Isn't it true from the viewpoint of a community, Mr. Dabney, that the lending limits of the combined institution are less than the lending limits of the separate institutions?

A. Yes.

Q. Mr. Dabney, one of the purposes for the merger was to improve and strengthen the trust department of the combined institution, was it not?

A. I wouldn't say that in our minds that was the principal reason for the merger. That was one reason. There were many reasons for the merger, as I have outlined.

Q. But that was one of them, wasn't it?

A. Yes, sir, all business of the bank.

Q. You hoped, did you not, as a result of the merger to increase your deposits considerably so that you would be in a better position to make more loans?

A. I think it is only fair to say we didn't expect to get deposits from other banks in Lexington by virtue of the merger. We hope to increase our overall deposits principally by these outside people, as I have told you.

Q. I believe you testified about the recent changes in the type of industry in Lexington. A number of large corporations came into Lexington and established plants prior to the [382] merger, did they not?

A. Yes.

Q. You have mentioned a number of them.

A. I told you about them.

Q. To your knowledge, the lack of a combined bank didn't prevent those companies from coming in here, did it?

A. No.

Q. Mr. Dabney, I would like to show you at this time what purports to be a pamphlet put out by the Indiana Bankers' Association and ask you a few questions about that report.

Mr. LISLE. I don't believe this is in evidence. If this witness is not familiar with it——

Mr. ODEAR. I think we ought to object to the use of this pamphlet in evidence for the purpose of cross-examination or for any other purpose. We don't know anything about that pamphlet.

The COURT. Is this cross-examination on anything that was brought out in chief?

Mr. WILLIAMS. It deals, your Honor, with competition between banks and savings and loan associations. I want Mr. Dabney——

The COURT. Ask what you want to ask him, but that has nothing to do with Indiana.

[383] By Mr. WILLIAMS:

Q. Mr. Dabney, would you agree with this statement as a correct statement, that the difference between a bank and a savings and loan association——

The COURT. I want to hear what you say, and you put your hand up there and I only get half of it.

Mr. WILLIAMS. I am sorry, your Honor.

The COURT. I hate to bother you, but I would like to hear it.

Mr. WILLIAMS. I am sorry.

By Mr. WILLIAMS:

Q. The question is: "What is the difference between a bank and a savings and loan association?" I want to ask you whether you agree with this statement:

A savings and loan association is not a bank. Each performs a separate and distinct function. Banks are depositories of funds and provide complete financial service. Among the services available at banks are: Checking and savings deposits accounts, business and agricultural loans, personal and auto loans, cashier's checks, and trust facilities. Savings and loan associations are mutual organizations selling shares to provide for the financing [384] of homes. Savings and loan associations do not provide the banking services enumerated above.

Do you think that is a correct statement?

A. Did that say—I tried to remember all you read. Did that say that banks made mortgage loans or not?

Q. It didn't mention that specificially. It mentioned some of the things that banks did.

A. Well, in that particular it is inadequate. It is not a full and complete statement of comparison.

[385] Q. To the extent that it does compare them, is that a true statement?

A. Read it again so—I will go over it one by one with you, and then I can answer it.

Q. "A savings and loan association is not a bank".

A. That is true.

Q. "Each performs a separate and distinct function."

A. Well, some of the functions that they perform are concurrent, the same, like mortgage loans.

Q. "Banks are depositories of funds and provide complete financial service". Is that correct?

A. Yes.

Q. "Among the services available at banks are checking and savings deposits accounts".

A. That is true.

Q. "Business and agricultural loans".

A. Yes.

Q. "Personal and auto loans".

A. Yes.

Q. "Cashier's checks".

A. Yes.

Q. "Trust facilities".

A. Yes.

Q. "Savings and loan associations are mutual [386] organizations selling shares to provide for the financing of homes." Is that correct?

A. Yes.

Q. "Savings and loan associations do not provide the banking services enumerated above." We will skip that. I will withdraw the last.

Mr. Dabney, would you agree with this statement: "As creditors, bank depositors make withdrawal requests to obtain repayment of their savings"?

A. May they make requests? Is that what it says?

Q. "As creditors, bank depositors make withdrawal requests to obtain repayment of their savings."

A. They may within the regulations of the bank governing savings deposits.

Q. "As investors, association members"—meaning savings and loan associations—"actually apply for repurchase of the shares by associations."

A. Now you are getting into technical building and loan association procedure. I never worked for one. I don't know that I know too much about it. That may be true. It is true as far as I know, but don't use me as a witness to prove it.

Q. "Banks in most instances honor savings withdrawal requests upon demand."

[387] A. Wait a minute. No, sir, they don't.

Q. Is it an exception to the rule that they don't?

A. Well, savings deposits are withdrawn according to the regulations only after certain notice. A bank, any bank, may or may not require the notice. It doesn't have to if it doesn't want to.

Q. Is this a correct statement, Mr. Dabney: "If banks do invoke a delay as provided in their savings deposit contract, they must pay all withdrawals on demand in the full amount"?

A. Sure, that is true. If the depositor conforms with the regulations of the bank and wants to take out his money, he gets it all.

Q. Would you agree with this statement: "If associations are unable to repurchase members' shares within thirty days after demand, they may invoke a take-your-turn plan, namely, filing requests in numerical order"?

A. Again I am not an expert on savings and loan association procedure. That may be true.

Q. Is that true as far as you know?

A. I say I don't know. It is true as far as I may remember about it. I never worked for a building and loan association.

Q. Do any building and loan associations have [388] accounts in your bank, Mr. Dabney?

A. What bank are you talking about now?

Q. The consolidated bank.

A. Yes.

Q. Are any members of the Board of Directors or officers of your bank associated in any way with a savings and loan association in Lexington?

A. Yes.

Q. Would you identify the individuals in the association?

A. I will try to. Mr. Nichols, John Nichols, is—I think his title now is Honorary Vice Chairman of our Board of Directors; he has a connection with the Lexington Federal Savings and Loan Association. He may be an officer and a Director of it. I don't remember just exactly what his connection is, but he is connected with it.

Mr. Ades, David Ades, who is a Director in our bank, also has some connection with that building and loan association. They are the only ones that come to my mind at this time.

Q. Does the Consolidated Bank refer applicants who seek long-term mortgage loans to the savings and loan association?

A. They can if they want to.

[389] Q. Do you know whether they do?

A. I don't know. I never have that I remember—or very few times I can remember. I could if I wanted to. The other officers of the bank may do it.

Q. Mr. Dabney, was one of the purposes of the merger of the two institutions to increase the structure of the management and improve the management, provide more trained personnel?

A. The bank has practically the same management after operation of a year that they had when they started. I presume in time there will be changes in the managment. It depends on what happens to the bank—whether they need more personnel or need less personnel. It depends on how the situation may develop.

Q. So that now you have working for one institution the same management and personnel that you had previously working for two institutions?

A. Essentially the same.

Q. Isn't it important in the operation of a bank to have capable, well-trained people?

A. Yes, sir.

Q. And that is a big advantage that occurred as a result of the merger, is it not?

A. Advantage over whom?

[390] Q. Over institutions that either do not or cannot provide as fine a management?

A. I think every bank in Lexington has as good a management as ours. I don't think there is any inadequacy in the management of every bank in Lexington. They are well managed.

Q. You thought at the time of the consolidation, did you not, that the merged institution would have a depth of management, not only in the principal executive area but in levels of management and supervisory positions, superior to that of the banks separately which would be both beneficial to the bank?

A. It might be, but nothing that the other banks haven't got. We have got a larger bank. We have more people working for us, if that is what you mean.

Q. Another anticipated benefit from the merger was to be better able to provide the combined institution with automated equipment, was it not?

A. We hope to improve—all banks hope to improve the equipment that they have. These people that manufacture bank machines manufacture them for big banks and little banks and medium-sized banks.

They cost a lot of money. If you can pay the money, you

can buy them. A little bank can buy one and a [391] big bank can buy one.

Q. They are quite expensive, are they not?

A. For big banks, medium-sized banks and little banks, they are all expensive, yes, sir.

Mr. WILLIAMS. No further questions.

[392] The COURT. Anything further of Mr. Dabney?

Mr. LISLE. Yes, just one or two points very briefly, your Honor.

Redirect examination by Mr. LISLE:

Q. Mr. Dabney, you were asked on cross-examination about any other checking accounts that these tenants might carry with either of the two banks, the Security Trust Company or the First National. I will ask you if you will refer again to that exhibit with reference to the tenants and see whether or not there is not an explanatory note attached thereto which explains that fully.

The COURT. Exhibit 61. You don't have to ask him what the exhibit shows; it speaks for itself.

Mr. LISLE. "The tenants of the trust properties of First National and Security included in the attached chart include the tenants of all business or commercial property of all trust properties held by First National and Security in their capacity as executor, administrator with the will annexed, trustee, co-executor or co-trustee under inter vivos, or as agent, and they include all such business or commercial properties wherever in Fayette County. Of the tenants included in this chart, only two maintain general checking accounts with First National and only one maintains [393] a general checking account with Security. Two of them maintain depository accounts with Security, and nine maintain depository accounts with First National. By depository accounts is meant that the tenants deposit their local checks for clearance with their respective banks, and as soon as the money represented thereby is collected and cleared, the tenant writes a check and transfers the funds in the account to a general account that his company maintains in an out-of-town bank. The money in these accounts is never available for investment by the bank."

By Mr. Lisle:

Q. With reference, Mr. Dabney, to the real estate loans under one year maturity which Mr. Williams asked you about, can you explain in general what short-term real estate loans generally are?

A. Yes. Short-term real estate loans are generally called construction loans. If a person is going to put up a building—say a substantial commercial building, one of these motels or anything like—he might get a construction loan from a bank. A construction loan will be disbursed to him as he needs the money to put up the building. It is of short-term duration.

Upon the completion of the construction, the short-term loan would be taken up generally by a long-term loan. That [394] long-term loan might be made by the bank. It might be made by an insurance company; it might be made by anybody. But the construction loan—all construction loans—are made to run during the period of construction, which is a matter generally of a month.

[395] Q. In your opinion, are a substantial portion of these short-term real estate loans made by the Trust Company on construction loans?

A. Yes.

Q. Now, with reference, Mr. Dabney, to competition for mortgage loans—and you have been questioned very extensively about fifteen-year loans and the twenty-year loans and savings and loans, and insurance companies—is there competition and are there other factors to be considered in determining whether the prospective borrower will get his loan from a bank at five or ten years, or from a savings and loan association, or an insurance company in, say, fifteen years; are there other factors besides the term of the loan which are considered?

A. Yes. One other factor would be the rate of interest.

Q. What are some of the other factors?

A. Another factor would be the difference in the terms of the loan. I don't mean the number of years that a loan runs; but I mean in the other terms. For instance, in our bank, we do not charge a lot of fees and commissions and appraisements

generally for a loan on a residence, say. And we give the borrower the right to prepay at any time he wants to.

[396] Now, that same prospect——

The COURT. You answered the question when you said there was a difference in the terms.

The WITNESS. Yes, sir.

By Mr. LISLE:

Q. Would there be competition for that business between a bank's ten-year loan on those prepayment privileges and so forth, and an insurance company's fifteen-year term?

A. There certainly would be.

Q. Now, you were also asked about these individual—you were asked about these probate records. And you clearly show that they cover only the Probate Court. Do you have access to the information in the other banks which are not shown by the public records?

A. No.

Q. As to the individuals, do many of the individuals choose to administer or have administered their estates by other individuals rather than by corporate trustees?

A. Yes. According to these figures, that is the bulk of the business here.

Q. Is there any other professional competition that you meet in that area?

A. Yes. Frequently a man who is having a will written [397] will have it written by a lawyer. According to the law now, only lawyers can draw wills.

The COURT. Is that answering any question?

The WITNESS. I think it is.

Mr. LISLE. I think he is getting to it, yes, sir.

The COURT. Well, make your question so we can get an answer.

By Mr. LISLE:

Q. In other words, do you find in your experience that frequently the settlement of estates is handled by lawyers and accountants?

A. Yes, indeed. That is the reason——

The COURT. You have answered it.

The WITNESS. All right.

I said yes.

Mr. LISLE. That is all.

Mr. WILLIAMS. I would like to ask him one additional question, your Honor.

Recross-examination by Mr. WILLIAMS:

Q. Mr. Dabney, does Security Trust classify as construction loans loans secured by real estate?

A. Well, if you haven't got real estate, you can't construct anything.

[398] The COURT. He didn't ask that.

The WITNESS. What was the question?

The COURT. That is what I thought.

Present your question again. And let's get an answer. Now, answer this question.

By Mr. WILLIAMS:

Q. What I meant to ask was this, Mr. Dabney: Do you consider a construction loan as one secured by real estate?

A. Yes, I do.

The COURT. There is no absolute necessity for it, is there? A construction loan may be made to somebody that you wouldn't require security from; isn't that right?

The WITNESS. It might be. We could lend money without any security if we wanted to.

The COURT. Those questions don't have an absolute answer yes or no.

The WITNESS. I just trying to do the best I could with him, Judge.

The COURT. Anything more?

Mr. WILLIAMS. That is all.

The COURT. All right. You are excused, Mr. Dabney.

(Witness excused.)

[399] The COURT. We will be in recess until in the morning at ten o'clock.

(Whereupon, at 3:50 o'clock p.m., the Court recessed until 10:00 o'clock a.m., Thursday, February 22, 1962.)

[400] In the United States District Court, Eastern District of Kentucky at Lexington

Transcript of Testimony and Proceedings—February 22, 1962

[401] PROCEEDINGS

The COURT. Gentlemen, you may call your witness.

Mr. ODEAR. I call Mr. Ira J. Porter.

Whereupon IRA J. PORTER was called as a witness, and, being first duly sworn, was examined and testified as follows:

The CLERK. Mr. Ira J. Porter, your Honor, is the witness.

Direct examination by Mr. ODEAR:

Q. Your name is Ira J. Porter?

A. Yes, sir.

Q. Where do you live?

A. Louisville, Kentucky.

Q. What is your business or profession?

A. I am in the banking business.

Q. And with what banking institution are you now connected?

A. The Louisville Trust Company.

Q. What is your present position with the Louisville Trust Company?

A. My present position is Vice Chairman and Director.

[402] The COURT. Mr. Porter, it is rather unfortunate, but it is not very easy to respond to questions looking away from the questioner; but the other side wants to hear also, and I am interested in it too.

The WITNESS. Yes, sir.

By Mr. ODEAR:

Q. How long have you been connected with the Louisville Trust Company?

A. It will soon be thirty-one years.

Q. Would you tell us briefly the various positions that you have held with the Louisville Trust Company and generally what your duties have been?

A. Yes, sir. I went there in 1931 as Treasurer and occupied that position or had that title for about three years. Then I was made the Vice President and Treasurer. That was for

about two or three years. Then my title became Vice President for nine years.

Then I was made First Vice President. That has continued for a period of seventeen years until I was made Vice Chairman this past January. For the last seventeen years, I have been a Director for the Bank.

Q. In those various positions which you have held, did you have an opportunity to become familiar with the various facets of commercial banking?

[403] A. Yes, sir.

Q. Were you ever associated with any bank in Fayette County, Mr. Porter?

A. Yes, sir.

Q. When and what bank?

A. With the old Guaranty Bank and Trust Company from about 1925 to 1931.

Q. Where were you born and raised, sir?

A. Caneyville, Grayson County, Kentucky.

Q. Where were you educated?

A. In the schools there and for one year at Berea College and the balance of the time at Georgetown College.

Q. What other banking experience, if any, have you had other than the Louisville Trust and the old Guaranty Bank of Fayette County?

A. Most of my life has been devoted to it in one way or another. My earliest experience was with the Bank of Caneyville where I worked after school hours and during vacations. And then after I finished my college work at Georgetown, I was with the Louisville branch of the Federal Reserve Bank of St. Louis for a very short time. I then went from there to The First State Bank of Pineville where I worked from bookkeeper to cashier between 1920 and 1925.

[404] Q. When did you say you left the Guaranty Bank of Lexington?

A. In 1931.

Q. Since that time, have you maintained any degree of familiarity with banking in general, banking conditions, in Lexington?

A. Yes, sir; I have.

Q. How did that come about?

A. It came about through the connection of the Lexington banks with my bank. We are favored with accounts from most of them. And naturally I have a lot of friends in all the banks. And I kept up a rather close association with the individuals involved and also with the development of the banks from year to year.

Q. During the year 1957 and the years immediately prior thereto, did The First National Bank maintain a correspondent account with your bank?

A. Yes.

Q. Did the Security Trust Company maintain such an account?

A. Yes, sir.

Q. By reason of those accounts did that enable you to be familiar with the administration and the problems and the general business of those two institutions?

[405] A. Yes, sir, by reason of those accounts, and also by reason of my association with the individuals involved in the two institutions.

Q. What do you mean by your association with the individuals involved with those institutions?

A. Both business and social contacts with them.

Q. What individuals in those banks did you have business and social contacts with in the years 1957 and the years immediately prior thereto?

A. In the First National Bank there was Mr. Courtney and Mr. Nichols and Mr. Miles and others. I was acquainted with most all of the official staff and some of the others in the bank. I had conducted some A.I.B. courses in banking which some of these young men and young women attended in years gone by. Then in the Security Trust Company, I was well acquainted with Mr. Dabney and Mr. Landrum and some others.

Q. Now, as a result of your personal acquaintance and business acquaintance with the officers of those two institutions and your knowledge of their business and problems that you have already described, during the year 1957 did you make any suggestion to either or both of those banks with reference to something that they might do?

[406] A. Yes, sir, I did.

Q. What was that suggestion?

A. I suggested that they might consolidate.

Q. Was that based on any study that you had made of their particular situation?

A. It was certainly based on knowledge that I had of the situation.

Q. Would you tell the Court what were the reasons which led you to make the suggestion to those two banks that they might merge or consolidate advantageously?

A. I knew that the supervisory authorities had suggested on more than one occasion that the First National could use more capital in its business. I knew also that here was a bank which was primarily a commercial bank with large deposits, with a relatively new but growing trust business, and here was a trust company that was primarily a trust company with a relatively new but a growing commercial banking department.

The bank had less capital than it could use in its business; the trust company had more capital than was actually needed to support its deposit liability and the trust business which it had. So, a combination of the two would make an ideal situation in that their net worth would complement each other and their official families would also complement each other.

[407] Q. You say the official families. You mean the officers and the management of the bank?

A. Yes, sir.

Q. Mr. Porter, in arriving at that decision, did the industrial growth which had already taken place or which you foresaw having anything to do with your reasons?

A. Yes, sir, it did. The Lexington community, as you know, was growing rather fast. And it was my opinion that a larger bank than existed in Lexington at the time would be an important factor in aiding that growth.

I believed that industry would be more interested in coming into a community that had a bank which would come nearer meeting its credit requirements and other requirements than it would into a community that might not have that bank.

And in looking around at other communities where the industrial growth was eminent, we could see in those communi-

ties much larger banks by comparison than existed in Lexington.

Q. I believe you stated that the character of the management complemented each other between the officers of these two banks. In what way did you feel that was true, Mr. Porter?

A. In this respect: the top officers, the two top [408] officers of the First National had arrived at what is ordinarily regarded as retirement age. It had some splendid younger men in the bank such as Mr. Miles who was coming along. That was not true in the Security Trust Company. The top management there had not reached what we ordinarily regard as normal retirement age. And even though the management of each bank was sufficient unto itself, there were things to be desired in both cases. So, a consolidation of the two would solve the problems.

Q. Did you take into consideration the effect that the proposed merger might have on the community of Lexington and Fayette County and central Kentucky?

A. Yes, sir, I did. And I think that was a partial answer a minute ago when I called attention to the fact that I believed that the community would be benefitted by a larger single institution.

So, that was an important factor in the consideration.

Q. Mr. Porter, do you take into consideration what effect, if any, this merger might have on other competing banking institutions in Lexington?

A. I certainly did. And it was my conclusion that the remaining institutions would not be hurt. As a matter of fact, my experience has been that in consolidations of [409] banks such as these two, the remaining banks benefit.

I had at that time and still have good friends in all these other banks. And I certainly would not have suggested anything which I thought might harm any of them. And I would have just as quickly have done something for them had the occasion presented itself as for these other two banks.

Q. Based on your banking experience and training and your familiarity with the situation here in Lexington, would you please tell the Court whether or not in your opinion the merging of these two banking institutions would give to it any unfair

competing advantage over any of the other competing banks in Lexington?

A. I think not. When you talk about unfair competitive advantages, I think it would not or is not. There is no question but that size is a factor in competition. But I know of no way for a bank to monopolize the situation. If that were true, I think the Bank of America, the biggest bank in the world, would have all the banking business in America. There would be no competition in the area in which it operates. And there are some big banks in California that compete with the Bank of America.

Q. What are the general fields of banking in which competition exists between banks in the same community?

[410] A. I would say it is in the field of obtaining deposits and making loans.

Q. Those two principal fields?

A. Yes, sir.

[411] Q. Are there any regulations, Federal or State, which limit in any way the manner of competition between banks in the same community?

A. Yes, sir, there are a lot of regulations and a lot of laws which limit that manner of competition. I think we can go back to the days prior to the Great Depression and the banking collapse in the country and look at the competitive features which existed between banks in those days.

At that time a bank could engage in most any type of business it wanted to. The banks were operating bond departments; they were underwriting securities; they were selling securities; they were permitted to pay any rate of interest they wanted to on time deposits and on demand deposits.

They could give away any sort of a prize they wanted to to obtain deposits. The fact that they could engage in those types of business in my opinion was a contributory fact to the collapse, not only in 1929 but also in the early thirties.

Such things as that led to the Banking Act of 1933 and the subsequent Banking Act, and also to regulations of the Board of Governors of the Federal Reserve System, which are permitted under those Banking Acts.

Going back a little, if you want to call some history into account, there was a time when Kentucky could operate

[412] independent banks, private banks. That was not good. They could do most anything they wanted to.

So the Legislature of the State of Kentucky saw it was wise to do away with the operation of private banks. So through our state laws and through our national laws, banks are surrounded with innumerable regulations.

Q. What is the principal purpose of limiting, regulating, the competition which can take place between banks?

A. I think the principal reason is that banks are very close to being public institutions. They are privately owned, but the public certainly has a vested interest in the banks. They are essential to the life of the nation in providing the money supply and in providing credit and providing a means for clearing the millions of items which are developed day by day.

So our lawmakers have taken that into consideration, and because of the vested interest of the public in banks, it has become necessary.

Q. Is the financial soundness of the banking institution itself considered important?

A. I think that is the primary factor. A solvent bank is the only kind of a good bank there is. It is essential to the life of the nation that the banks be kept solvent. You saw what happened in 1929 and the early thirties when half [413] of the banks in the nation went out of business because they were not sound. It was the purpose of the subsequent Banking Acts to put them on an operating basis which would make them sound.

Q. Mr. Porter, based on your experience, would you say that the nature of competition as it exists in the face of these various regulations between banks is any different from the type of competition which exists in private commercial, free enterprises such as grocery stores?

A. Yes, I think anybody who watches television would observe that. Banks can't give away green stamps, yellow stamps, or any other kind of stamps. We cannot offer trips to Bermuda. We can't give away cameras or engage in other gimmicks to attract deposits.

So there is a tremendous difference between the types of competition.

Q. As a result of these regulations, where is the main field of competition left? In other words, I mean by that, how do banks compete against each other to get deposits and the opportunity of making loans?

A. There are various ways. I think one of the most important ways that banks compete in obtaining deposits is through the amount of service or the type of service which they are able to give to their customers and their prospective [414] customers.

Banks may or may not pay interest on savings accounts. That is an area in which they may compete. But when you get right down to it, the personal factor is the most important. I say that because, in developing the business in our bank, we have some very important business that we have had for a number of years which grew out of our ability and willingness to perform a type of service which was needed.

I remember one case in particular where I got in my car and traveled through Eastern Kentucky in order to introduce a product of a prospective customer. The result of that is that we have had a very substantial deposit from that customer now for some twenty or twenty-five years.

There are other ways. I think you lawyers will be interested to know a bank's counsel can offer aid to it in obtaining business through its interpretation of the respective laws. I say that because we have a substantial amount of business from a certain source which came as a result of the difference of opinion, as lawyers. It so happened that our lawyers were right and we got the business without any risk.

I think as long as bankers are intelligent and ambitious and willing to work very hard, there is still a lot of room for competition in obtaining deposits.

Q. Would it be fair to say that this field of service [415] and personal contact is the primary method of competition between banks?

A. I think you have to take into consideration the fact that banks, after all, are primarily service institutions. Therefore what the bank can do for its customers other than to safely protect their funds is very important.

Q. In view of that fact, would you say that size alone is a determining factor in competition between banks?

A. No, sir, there is no question but that size is a factor on the top side, and on the bottom side.

Q. What do you mean by that?

A. I mean by that there is some advantage to size.

Q. Is there some advantage to smallness?

A. There is also some advantage to being small. If it were possible for the big bank to obtain all the business, then my bank would not have grown. Most of my banking experience has been in a bank that occupied a minority position. Our bank has grown over the years from a bank that began as a reorganized institution, just a shell of a bank, to what I would call an important place in the banking picture of the nation.

Q. What is the relative size of your bank as compared to the size of the four or five leading banks in Louisville?

A. We are now in fourth place. There was another bank [416] smaller than ours until it consolidated with another bank, which left us in the bottom position—number four.

Q. From your experience have you found that the size of the banks in Louisville which were larger than your bank has caused them to be able to exclude your bank from competing successfully in any functions of banking in which it chose to engage aggressively?

A. We have not always gotten every piece of business we went out for, but size alone has not kept us from it. It may be a little more difficult to go up against a bank, a competitor, larger than you are; but when you win, it makes you mighty happy.

Q. What is the largest bank in Louisville?

A. The Citizens Fidelity.

Q. In your experience has a bank the size of the Citizens Fidelity been able to cause your bank to follow its practices or dictate to you how well you operate your bank?

A. No, sir, it has not.

Q. What has been your experience generally as to the ability of smaller banks to compete with the larger banks in obtaining demand and time deposits and loans?

A. There again I would have to go back to personal experience and experience in our own bank, and to show you that,

when we began business in 1931, every bank in town was in [417] better shape and was larger in size than ours. But we have been able to build a good sound bank with a net worth of around $9 million, and to obtain not only from many of the leading concerns in Louisville, but also from many of the leading concerns throughout the nation.

Q. Mr. Porter, I would like to show you here a chart reflecting the percentage of total deposits held by the banks in Louisville.

Mr. ODEAR. Before I do so, I would like to submit it to opposing counsel.

By Mr. ODEAR:

Q. Are you familiar with that exhibit which I have just handed you?

A. Yes, sir. That is a chart which I have kept since 1943, which shows the relative position of each bank as compared to the other leading banks in the Louisville area as to deposits.

Q. What does it show as to the percentage of deposits held by the Citizens Fidelity or the largest bank in Louisville at the beginning of the time period covered by the chart?

A. It shows that in 1943 that bank held 42 percent of the deposits held by the then five major Louisville banks.

Q. What does it show as to the general trend as to those percentages for that bank over the period of time covered [418] by the chart?

A. The general trend is down so that, as of the end of 1961, it showed about 36 percent.

Q. Now, Mr. Porter, while the Citizens Fidelity was going down percentage-wise in deposits held, as you have described, what success does that chart indicate these smaller banks had in obtaining deposits during that same period of time?

A. The smaller banks were gaining. The smallest bank, which was then the Lincoln Bank, started out with about 8 percent of deposits; and as of December 31, 1959, prior to its consolidation with the First National Bank, is showed between 10 and 11 percent. Our bank started out with about 12 percent. It had some loss and it had some increase.

Q. Will you speak up just a little bit, Mr. Porter.

A. Yes. Our bank, the Louisville Trust Company, started out with 12 percent and it had some losses, some increases. And as of now we are just about the same percentage.

Q. Would you file that exhibit as a part of your testimony in this case, please.

A. Yes, sir.

Mr. ODEAR. Let it be marked.

The CLERK. It will be Exhibit No. 91 for the [419] Defendant.

(The above-mentioned chart was filed with the Clerk and marked Defendant's Exhibit No. 91.)

By Mr. ODEAR:

Q. Mr. Porter, when you recommended the First National and Security Trust Company consolidation, did you consider the proposition as to whether or not the merged bank would be able to dominate the community in general, and commercial banking in particular in Fayette County?

A. Well, I didn't give that a thought because I believe then, and I believe now, that it isn't possible for one bank to dominate the field of banking in a particular area.

Q. Mr. Porter, based on your banking experience would you say that different commercial banks specialize in different fields of loans particularly and different functions of banking?

A. Yes. I think finally you can just about tell in what category commercial banks operate. That is usually the result of their—well, it is always the result of their management, the result of their policies. Not every bank starts out to be the biggest bank in the community. As a result of management and policies, different banks fall into [420] different categories.

For example, some commercial banks stress the importance of their consumer credit departments. Some of them stress the importance of their savings departments. Some of them stress the importance of going out after the larger commercial accounts, with less stress on the smaller accounts.

Some of them stick to what I would call wholesale banking in the field of credit, rather than retail banking such as we find in consumer financing.

Q. Based on your banking experience, would you say that that trend towards specialization in individual banks is forced on them by the pressures of larger banks in the community?

A. I doubt that any banker is going to admit that he runs second because he is forced to. I think any bank is the result of its management, as I indicated a while ago. Many bankers prefer to operate a small bank, appealing to a certain type of business, rather than to use its efforts in obtaining the larger types of business.

In our particular bank over the years we have given more attention to obtaining the larger types of business than we have to the smaller types of business. By the same sign, we have paid more attention to developing demand deposits than we have savings deposits. That same thing is true in the [421] area of our loans. We have appealed more to the larger lines of credit and the wholesale type of credit rather than an effort to devlop our personal loan department to the exclusion of all the rest.

Q. In those fields in which your management has chosen to specialize, Mr. Porter, tell the Court whether or not you have been able over the years to compete with the larger banking institutions in Louisville, Jefferson County.

A. Yes, we have. The result is that we have some of the finest commercial business to be found in any bank, not only from organizations, institutions and businesses in Louisville, but also theoughout the nation.

[422] By Mr. Odear:

Q. Mr. Porter, based on your broad experience in banking, your general knowledge of the Lexington banking situation, and the detailed knowledge that you have gained—well, first, let me ask you this: have you studied any charts which show the situations in Lexington? Let me ask you that first.

A. Yes, I have seen some of them.

Q. Based on your general banking experience and your knowledge of the banking situation in Lexington in general, and what you have learned from the examination of these charts, and in consideration of all the information you have on the subject, tell the Court whether or not in your opinion the merged bank of First Security National Bank and Trust Company will

or does have any power in this community to dictate to the other banks the policies, practices, and prices which they follow?

A. I certainly think it does not. And I believe in a general sort of way I have covered that by saying that in my opinion there is no way for a bank to gain a monopoly in a community and to dictate the policies to other banks.

If that were true, I doubt that we would have seen a consolidation of the Morgan Bank in New York, for example, [423] with the Guaranty Trust interests, with the Morgan Bank winding up on top in management and with the Morgan name appearing first in the name of the bank. So, I cannot see that because size has been gained in this consolidation that the resulting bank would be in a position to dictate to any other bank what it shall do and what it shall not do.

Q. Well, that brings me to my next question.

In your opinion, does this merger create a monopoly in banking, commercial banking, in Lexington, and Fayette County?

A. No, sir, I think it does not.

Q. Now, Mr. Porter, calling your particular attention to the field of trust business in a community, is there competition for trust business between commercial banks who have trust departments generally?

A. Yes, sir, there is.

Q. Do banks compete with anyone else except other commercial banks for so-called trust business?

A. Yes, sir. Their big field of competition is with individuals who qualify in trust cases.

Q. Have you made any particular study of who gets the trust business in Louisville and Jefferson County and in what percentages?

[424] A. Yes, sir.

We make a study each year to determine what happened during the previous year in the qualification of trust estates.

Q. I would like to show you some exhibits which purport to set out the percentages of trust business and who gets that trust business in Jefferson County covering the years 1945 through 1960.

Before doing so, I would like to submit it to opposing counsel.

(The document was shown to counsel for the Plaintiff, and then handed to the witness.)

Mr. SPARTH. May I ask a question?

Mr. ODEAR. Yes.

Mr. SPARTH. My copy of this does not show who prepared this.

Mr. ODEAR. I will get into that with the gentleman when I talk to him about it.

Mr. SPARTH. Your Honor, I should like to state that we take the position that the record of qualifications of fiduciaries in Jefferson County is completely irrelevant to the issues of this case.

The COURT. I don't know. It might have some important relevance in a general way. Relevance is not [425] necessarily denied, but general relevance to the neighboring communities here I think might have a bearing on it. I am not going to exclude it. That is, provided the exhibit is made qualified by testimony of Mr. Porter as to who, how, and under what circumstances, so that it can be regarded as authentic.

By Mr. ODEAR:

Q. Mr. Porter, who prepared these exhibits? How were they prepared?

A. They were prepared by our Trust Department and I believe the individual in the Trust Department who did it is named Elbert Stone. They were taken from the records, the Court records, in Jefferson County.

Q. Does that gentleman work under your supervision by reason of your position with the bank?

A. Generally, yes. But more directly under the supervision of Mr. Caldwell, who is the head of our Trust Department.

Q. Were these prepared for the use of your bank?

A. Yes, sir.

Q. Now, without taking up the time of the Court to go into each separate figure, I am going to ask you to say what they generally show with reference to the percentage of business in the trust field which is handled by [426] individuals and the percentage handled by the respective banks?

A. Generally they show that the trust business handled by

individuals represents a larger percentage of the qualifications than that of any one bank.

Q. Tell the Court whether or not based on your banking experience if that would be the general situation in most places?

A. I would think so. But I have no figures to prove that.

Q. Does your acquaintance with the banking business in general in Lexington and Fayette County enable you to have any opinion as to whether or not a similar situation exists here?

A. I have seen some figures that would indicate that that same condition prevails here.

Mr. ODEAR. I would like to offer that in evidence.

The COURT. It may be marked.

The CLERK. Exhibit Number 92 for the Defendant.

(The document above mentioned was filed with the Clerk and marked Defendant's Exhibit Number 92.)

By Mr. ODEAR:

Q. Mr. Porter, the exhibits which have been filed, I think, particularly those filed by the Government in [427] this case, indicate—and I think it is true—that as a result of this merger the merged bank would hold in its Trust Department approximately 94 percent of the trust assets which are held and administered by all commercial banks in Fayette County, Kentucky.

Tell the Court whether or not in your opinion size alone would exclude the remaining banks in Fayette County from being able to obtain trust business?

A. I think that factor alone would not exclude other banks from obtaining trust business. After all, trust business is developing day by day. And size alone is not the predominant factor in obtaining it.

Q. Do banks undertake to and are they successful in taking away any major portion of the assets, trust assets, which are already held by one given bank from that bank?

A. No. Generally that is not engaged in; because, once a bank is named executor in a will, it is a rather difficult thing, I would think, to change the wishes of the testator. So, about the only field of competition there of taking business away from each other would be in what we call investment accounts, agency accounts, pension funds, and business of that nature.

Q. Then, where is the field in which banks may [428] compete for trust business?

A. It is in the field where business is developing day by day and with those outside individuals who qualify year in and year out as administrators and executors and trustees of estates.

Q. In your opinion, based on your experience, Mr. Porter, if the other banks in Lexington set up active trust departments and actively seek this business and render proper service, would the fact that the merged bank has 94 percent of the total assets of business already created prevent the other banks from being able to obtain trust business?

Mr. SPAETH. Your Honor, I object. He is characterizing the nature of the other banks' trust department. He is characterizing it as inactive by the form of that question.

Mr. ODEAR. I don't intend to.

The COURT. Let me hear the question.

(The question was read by the reporter.)

The COURT. Now, what is your objection.

Mr. SPAETH. Your Honor, I think that implies that the other banks are not now active.

The COURT. I don't see any such implication.

Objection overruled. Go ahead.

[429] Some of them may be; some of them may not be. You may answer.

The WITNESS. I will have to relate that answer to our own experience and say that in 1931 when we—and when I say "we", I mean the management which is now in effect—began to operate our institution, we had had practically no trust business. It was a reorganized bank; and during the period of reorganization, much of the trust business went to other institutions. And at that time I don't know what the percentage of the total trust business of the community was held by the then largest trust company, but it was rather substantial, one reason being that a trust company which is now very active in the trust field was not too active at that time.

But over that period of years, we have been able to build up a very substantial trust department. Trust companies do not customarily publish their assets, the dollar value of the assets in their trust departments; but the dollar assets in our trust

department compare very favorably with the dollar assets in our commercial department.

By Mr. ODEAR:

Q. Would you say that that should apply generally to competition for trust business among banks?

[430] A. I would think so. We were no smarter than these fellows are who are running the Lexington banks today. And I think that same thing would apply.

Q. Mr. Porter, is size of the Trust Department a talking point which can be used to attract business to the Trust Department?

A. Sure. Size is a factor.

There again you can talk about it if you are the biggest and you can talk about it if you are the least.

Q. In other words, smallness also is a feature that you can use as an argument to obtain trust business?

A. We have used it. And I hope too many of my competitors aren't around today.

Q. Mr. Porter, the merged bank has now been in operation for almost a year. Have you noticed any effect of the operations of the merged bank on business of your bank?

A. Yes. It has had some effect, both from the standpoint of deposits and loans. Before the consolidation, we had accounts from two institutions in addition to the other Lexington banks from which we have accounts. And also in the field of loans we were participating with the First National Bank in some credits. We lost those participations after the consolidation. That is not to say we lost all of them, because we still participate in one or two.

[431] Q. That is, participating loans with the First National?

A. Yes, sir.

Mr. ODEAR. You may cross-examine.

Cross-examination by Mr. SPARTH:

Q. Mr. Porter, at the time that you held discussions with representatives of First National and Security Trust in 1947, I believe, what was your position with Louisville Trust?

A. I was then First Vice President and Director.

Q. Mr. Porter, are you aware of the fact that in an application to the Comptroller of the Currency the consolidating banks claimed they would be able as a result of the consolidation to attract correspondent bank deposits from banks in Louisville?

A. From banks in Louisville?

Q. No. I beg your pardon.

They would be able to attract correspondent bank deposits now held in Louisville banks of banks in central and eastern Kentucky.

A. Yes, sir.

Q. What can a bank do with correspondent bank deposits, Mr. Porter?

[432] A. The same thing it does with deposits from individuals or corporations. It lends those funds, invests them in different types of securities.

Q. Such deposits I take it are valuable to the bank which holds them?

A. Yes, sir.

Q. Your bank was, of course, aware of the fact at that time that you were rendering assistance to these two banks in their attempts to consolidate?

A. The assistance was rendered primarily by me. But I was an officer of the bank; therefore, the bank was involved in it.

Q. But they knew about it?

A. Yes, sir.

Q. And yet they did not object to your assisting in a venture which might cause a loss in deposits from your bank?

A. That was not the primary thought in it. It might result in some loss of deposits, but the overall gain would be more substantial than any loss that we might suffer from decline in deposits.

Q. What would be the gain?

A. I think the gain would have—the gain would be not only to our bank, but my opinion was that the result of a bank such as would emerge from the consolidation would [433] be of benefit to the Lexington community and, consequently, to the entire State of Kentucky.

I think anything that would benefit the Lexington community would naturally benefit Kentucky and would benefit any Louisville bank.

Q. Have there been any recent consolidations or applications for consolidations of Louisville banks?

A. Yes. The First National Bank and the Lincoln Bank and Trust Company consolidated recently. There was an application for a consolidation between the Citizens Fidelity and the Bank of Louisville, which was declined by the Board of Governors of the Federal Reserve System.

Q. At that time do you know what the relative percentage of deposits and assets were of the Citizens Fidelity Bank as compared with all banks in Louisville?

A. At what time, sir?

Q. At the time of the application for the consolidation? Approximately, if you know?

A. It was close to 34 percent.

Q. Did you actively support that merger application?

A. We took no part in it at all.

Q. Do you know what percentage of the deposits and assets of Fayette County commercial banks is held by First Security?

[434] A. I think it is about 52 percent.

Q. The application of Louisville for consolidation of which you spoke, would that have resulted in a bank approximating the size of First Security in terms of relative percentages of the market?

A. No, that would not have added substantially to the percentage in Louisville. The Bank of Louisville was a relatively small bank. The deposits, I believe, were in the neighborhood of $20 million to $25 million.

Q. Citizens Fidelity is the largest bank in Louisville; is that correct?

A. Yes, sir.

Q. Mr. Porter, what services does your bank currently render to First Security?

I believe you did state that you held their correspondent bank deposit in your bank?

A. We render the normal services which any bank would render to its correspondent by way of collecting any items which

it might send to us for deposit and participating in one or two credits which they have referred to us.

Q. Do they have deposits with your bank in order to effect check clearances more rapidly than they could otherwise accomplish it?

[435] A. That may enter into it. I doubt that that is the most important reason.

Q. What is the current deposit held in your bank of First Security?

A. I don't know.

The COURT. What was that question? Read the question.

(The question was read by the reporter.)

By Mr. SPAETH:

Q. What services does your bank currently render to other of your correspondent banks located in central and eastern Kentucky?

The COURT. Now, you dropped your voice again. Located where?

Mr. SPAETH. In central and eastern Kentucky.

The WITNESS. We attempt to render any service which they ask for. And that involves the normal banking procedures plus giving advice by way of the investment of their funds, policy matters, obtaining personnel for them, or most any field where they might need service they think we can render.

By Mr. SPAETH:

Q. Generally these are the same types of services you currently render to First Security?

[436] A. Yes, sir.

Q. Now, at the time you reached your conclusions concerning the benefits of the merger in 1957, did you consult with the other bankers in town as to how they felt about it?

A. No, sir.

Q. Do you think they would be more familiar with the situation in Lexington than you would be?

A. Will you state that question again?

Mr. SPAETH. Repeat the question.

(The question was read by the reporter.)

The WITNESS. If you are referring to the general situation in Lexington, they might be. But I doubt that they would be any more familiar with the condition of these two institutions than I would be after having discussed their cases with the principals involved in the two institutions.

By Mr. SPARTH:

Q. But they would, of course, know more about the condition of their own institutions and how they might be affected by the merger than you?

A. I would certainly think so.

Q. Now, you testified, I believe, that the supervisory authorities had suggested that an increase in the capitalization of First National was in order?

[437] A. That is what I was told by the management of the bank.

Q. Was there any other way that they could have increased that capitalization besides the merger?

A. Yes.

Q. How could they have done that, Mr. Porter?

A. They could have sold additional capital if there were buyers for it.

[438] Q. Have you any reason to believe there would not have been buyers for that stock?

A. I think there would have been.

Q. You stated, I believe, that in your opinion industry is more interested in coming into a town with greater ability to make loans and receive deposits, or at least you thought that comparing the situation before the merger and after, the situation would be more attractive to large industry.

Is that a fair characterization of your testimony?

A. I think that comes close. I am sure I said—or would have said—that a larger institution would be a point of attraction to larger industry.

Q. Are you aware of the industries which have come into Lexington prior to the merger?

A. I am not in position to outline those, no, sir.

Q. Do you know whether IBM has moved into Lexington?

A. I am sure it moved into Lexington before the merger.

Q. That, of course, is a large company, is it not?

A. Yes, sir.

Q. And The Square D Company?

A. Yes.

Q. International Harvester?

A. I think so.

Q. But you really don't know which industries have [439] moved into Lexington?

A. I know that those three have moved in, and I think for the sake of the record outlining the services that banks render for their correspondent banks and for communities in general——

Q. Have I asked you a question, Mr. Porter?

A. I was attempting to answer the one you just asked me.

Q. Go ahead, sir.

A. I think our bank had something to do with IBM coming to Lexington. I think we performed a very valuable service for the community in that regard.

Q. By your bank, you mean Louisville——

A. Louisville Trust Company.

Q. But that company moved into Lexington, then, as a result of your efforts and not because of the size of the local banks?

A. No, not because of our efforts solely, but we were in position—because of our connections in Lexington—to render a very valuable service to IBM which was needed before they could reach their conclusion to come to Lexington.

Q. I believe you stated that your conclusions as to the effect on the competing banks was based, at least in part, on experience you had with consolidations of banks of [440] the same type as First National and Security Trust?

A. No, sir, I don't think I said that. I think I said it was based on my experience in Louisville in competing with the larger institutions.

Q. There have been mergers in Louisville in recent years?

A. Yes, sir.

Q. Would you state for the record those that you can remember?

A. The most recent merger has been the merger of the First National Bank and the Lincoln Bank and Trust Company. The Liberty Bank has taken over the United States Trust

Company and the Bank of Middletown, and I believe the Bank of Jeffersontown, within the last ten years.

Q. Would those be reflected on that chart which you were explaining? I have forgotten what exhibit that is.

The CLERK. Exhibit 91 for the Defendant.

A. It would probably be reflected in the growth of the Liberty Bank, but that wasn't mentioned in the course of answering the question a while ago.

By Mr. SPAETH:

Q. So, much of the growth of some of the banks depicted on that chart is as a result of mergers?

A. No, sir, I wouldn't say that. Certainly the size [441] of the First National Bank has been substantially augmented by the consolidation of the First National and the Lincoln. But that is the only consolidation which has taken place in Louisville in recent years that has resulted in any substantial increase in size.

Mr. SPAETH. Your Honor, I don't have a copy of that chart.

The COURT. The Clerk has a copy which you can use.

By Mr. SPAETH:

Q. Mr. Porter, this exhibit covers a period beginning with 1943. What consolidations other than the ones you have mentioned have occurred since that time, if you know?

A. I am not sure, but it is entirely possible that during that period the First National Bank took over the Security Bank in Louisville. Of course the consolidations I just mentioned are between the Liberty National Bank and these smaller institutions.

Q. So, to the extent of these consolidations, the chart does not necessarily reflect the natural growth of banks competing with one another.

A. I am not sure what you mean by natural. Maybe these consolidations that took place in Louisville were rather a natural process.

Q. I believe you stated, Mr. Porter, that size is a factor [442] in bank competition. I believe you said it was not the dominating factor, but you stated that it was a factor.

A. Yes, sir.

Q. What is the nature of that factor?

A. It may be termed psychological. Some people naturally gravitate to big men, big institutions.

Q. The bigger institution would naturally have a greater depth of personnel than smaller institutions?

A. It takes more people to operate a larger institution than it does a smaller one.

Q. Would that have anything to do with the quality and the nature or the number of services that the larger institution can perform as compared with smaller competitors?

A. I think the small institution—and again I am basing that on our experience—can do a right good job in number of services and the type of services which it renders to the community.

Q. It can do a good job?

A. Yes, sir.

Q. But can it do as good a job as the larger bank?

A. I certainly think so.

Q. Can it do as many things as a larger bank?

A. I don't know what you mean by that. I think I [443] pointed out a while ago that banks are limited in the areas where they can compete. Certainly we can compete for deposits just the same as a big bank can. The small bank can compete for loans just as a large bank can.

Q. How do you compete for deposits?

A. You compete by a number of ways—through your advertising, through your policies, through the personal contacts of the officers and employees, the directors, through your friends, using every medium that you have at your command to compete.

Q. Does a larger bank have the greater means with which to advertise than the smaller bank?

A. I think we have got to admit that there are not many dumb people operating big banks, and any means that they might use will be on a conservative basis rather than a foolish or a reckless basis.

If the purpose of your question is to determine whether a big bank can spend more money on advertising than a smaller bank can, the answer is yes. It comes down to the question, however, as to whether they do or not. I have no records to

prove this, but my observation has told me that in some instances the smaller bank will spend much more money than a larger bank in advertising.

Q. I believe you stated that another area, another means [444] by which banks compete with one another is through solicitation by officers and employees.

A. Yes.

Q. And naturally the larger bank would have the greater number of officers and employees than the smaller bank.

A. That goes without saying.

Q. If the smaller bank can perform as effectively, have as good a number of services, as the larger bank, then why is it that First Security can offer better service than the banks could before their consolidation?

A. I don't know that that statement has been made to me—that they could offer better service. They are in position, as a result of their consolidation, to offer a larger line of credit than either one of them could by itself.

Q. You are speaking about the lending limit of the combined institutions?

A. Yes, sir.

Q. Do banks compete with one another for loans, Mr. Porter?

A. In one respect, yes.

Q. How do they compete with one another in the making of loans?

A. Banks live, you know, on the income they derive [445] from loans and investments. So it is important that banks employ their funds. They compete in that area as well as they do in the deposit area through the use of their personal contacts, and certainly in supplying the needs of the customers that they already have.

Q. A customer could go to one bank and perhaps be quoted one interest rate and go to another bank about the same time, in the same community, and be quoted a slightly different interest rate? Does that happen?

A. It has happened in banking circles.

Q. And that, of course, is an important factor in the customer's choice as to which bank to get the loan from?

A. I don't think so in many cases—the reason being that there again a bank isn't inclined to do foolish things. When you get into the area of rate-cutting on loans, you are in the area of doing foolish things.

Q. I don't believe I had reference to rate-cutting, Mr. Porter. I just meant in the ordinary course, doesn't it frequently happen that one bank will rate one customer slightly different from the way in which another bank will rate that customer and charge a slightly different interest rate based upon his assessment?

A. It can happen, but it is of minor importance when [446] it comes to competing for loans. You are familiar with the fact that there is such a thing as the prime rate, and most banks that do commercial lending observe the prime rate. A prime borrower is entitled to the prime rate and he usually gets it, regardless of the bank he does business with.

So I think this factor of the rate of interest which may be offered by one bank as compared to another is a very minor factor in competing for loans.

Q. What customers are eligible for the prime rate?

A. Do you want me to name some?

Q. No. Isn't it true, Mr. Porter, that those are large nationally known concerns?

A. As a general rule, yes, sir.

Q. And that most customers in Fayette County would not receive a loan at that rate?

A. The probabilities are that most of the customers of the Lexington banks would pay a rate a little higher than the prime rate.

Q. I believe you stated, Mr. Porter, that it was not possible to have a monopoly in banking. Would that be true if there were just one bank in a community?

A. It is true like there is one water company in a community that has a monopoly by license, but there is nothing to keep another group of people from organizing a [447] bank, and that usually happens in a community where there is one bank.

It is happening all the time. Our laws in Kentucky are such that any group of reputable citizens can start a bank.

Q. They of course would have to get a charter from the regulatory authorities, would they not?

A. Yes, sir. But again our laws in the State of Kentucky are such that a group of reputable people can get a charter; and that has been proved by recourse to the courts.

Mr. SPAETH. May I consult with my colleagues for a few moments, your Honor?

The COURT. Yes.

Mr. ODEAR. Your Honor, I was going to ask for about a five-minute recess. Would you rather wait until he is through?

The COURT. Unless he prolongs his consultation——

Mr. SPAETH. It will be just about five or ten minutes, your Honor.

The COURT. All right, we will be in informal recess for ten minutes.

(A short recess was taken.)

By Mr. SPAETH:

Q. Mr. Porter, I would like for you to refer again to [448] Defendant's Exhibit 92. Mr. Porter, I believe you testified as to the relative percentages of the total number of appointments made of corporate trustees or banks as against individuals.

A. Yes, sir.

Q. What does this chart show as to the relative percentage of the dollar volume of individuals versus banks?

A. Do you want any specific year?

Q. Just generally.

A. Generally the dollar volume is greater in the cases where individuals qualified than in cases where any one bank qualified.

Q. I am afraid you misunderstand me, Mr. Porter. I had reference to individuals as one class versus banks as a class.

A. Take 1960, for example. Individuals qualified in cases involving about 39 percent of all the cases. That left 61 percent for all the banks.

Q. I have one further question, Mr. Porter. Does this chart purport to show the entire range of trust department services performed by your bank and the other banks mentioned?

A. No, sir. This chart simply shows the number and amount of qualifications as found in the County Court Clerk's office.

[449] Q. What other services does your bank render in its trust department?

A. We render services in the area of pension funds, personal investment accounts; and I believe that would cover the greater percentage of the services rendered other than the situations that are shown by the public records.

Q. What about voluntary trusts?

A. That would come under the other investment accounts.

Q. And corporate trust accounts?

A. And corporate trust accounts?

A. And corporate trust accounts, yes, sir. We act as a transfer agent, registrar—that sort of thing.

Mr. SPAETH. That is all, Mr. Porter.

Mr. ODEAR. No further questions. Thank you, sir, very much.

The COURT. Gentlemen, I am sure that Mr. Porter wants to leave. Do you want to reserve him for any purpose?

Hearing nothing, you are excused, Mr. Porter.

(Witness was excused.)

The COURT. Call your witness.

Mr. ODEAR. Mr. LeRoy Miles.

Whereupon, LEROY MILES was called as a witness, and being first duly sworn, was examined and testified as follows:

[450] The CLERK. The witness, your Honor, is LeRoy Miles.

Direct examination by Mr. ODEAR:

Q. Where do you live, Mr. Miles?

A. I live in Lexington, Kentucky.

Q. How old are you, sir?

A. I am 54.

Q. What position, if any, do you hold with the First Security National Bank and Trust Company?

A. I am president.

Q. How long have you been president of that institution?

A. Since March 1, 1961.

Q. That is when it was formed by the merger?

A. Yes, sir.

Q. Mr. Miles, tell us briefly what your educational background is.

A. I graduated from high school in Lexington. I received a B.S. degree in Commerce from the University of Kentucky in 1928, a Masters of Business Administration from Harvard Business School in 1930.

After I was on the job, I attended the Graduate School of Banking at Rutgers, run by Rutgers and the American Bankers Association. That is a three-year course, two weeks [451] each summer, correspondence work during the year, and a thesis. I have taken several A.I.B. courses—that is, American Institute of Banking.

Q. Have you since your graduation from Harvard Business School done any other work except in connection with banks and banking?

A. No, sir.

Q. When did you first go to work in a bank?

A. July 1930.

Q. Was that practically immediately after your graduation?

A. One month, sir.

Q. For what bank did you go to work at that time?

A. The First National Bank and Trust Company of Lexington.

Q. In what capacity?

A. Really, I think they practically made a job for me then. It was taking a lot of the senior officers' time to talk with people about investments. I had specialized in it in school. They sent me to the Guaranty Trust Company of New York for several weeks to work in their investment advisory department to see how to do some sort of a job here.

And in addition to that, I was a part-time teller and a lot of things in the bank.

[452] Q. Outline for us now just briefly, if you will, the various positions which you have held in the First National Bank and the duties that you perform generally in connection therewith.

A. In 1937 I was made an official for the first time, assistant cashier—no change in duties; still primarily related to the investment account of the bank. I held that until March 1941, which is when I was called to active Army duty.

I was out for a little over five years; came back; was made a vice president of the bank. My scope of activity was widened into general banking, getting into loans at that time.

In 1955 I was made executive vice president. In 1958 I was made president—all of the First National Bank and Trust Company.

Q. Tell the Court whether or not in the discharge of your duties of those various positions you have become familiar with the various facets of commercial banking?

A. Yes, sir, I think I have.

Q. Mr. Miles, have you held any membership or offices in any banking organizations or societies or other institutions?

A. At the present time I am serving my third and last year as a member of the board of directors of the Cincinnati [453] Branch of the Federal Reserve Bank of Cleveland.

Q. You go to various meetings of bankers where bankers from various parts of the country meet and get together and discuss the problems of banking in general?

A. Yes, I do, and meetings of the American Bankers' Association and the Kentucky Bankers' Association.

[454] Q. Now, Mr. Miles, what position did you hold in 1957 with the First National Bank?

A. I was Executive Vice President.

Q. At that time was the possibility of a merger brought to your attention, a merger with the Security Trust Company?

A. Yes, it was.

Q. How did that arise?

A. It was through the suggestion of Mr. Ira Porter that these two banks seemed to complement each other in so many areas. And it appeared to make sense to him for the community, for the shareholders, and for the banks.

Q. Was anything actually done with reference to merging at that time?

A. No action was taken.

Q. Did the subject of merger again arise at a later time?

A. In 1960, yes.

Q. Tell the Court what happened at that time?

A. Well, it seemed to be the consensus of a number of individual members of the Boards of the two banks that this

should be explored again. And then representatives of each bank met.

They decided that it made sense, and that the [455] best basis to explore it was to have a not-interested bank in which both of us had confidence to help us plan the details and the basis of consolidation.

Q. Was such a bank selected?

A. It was.

Q. What bank was that?

A. The Morgan Guaranty Trust Company of New York.

Q. What did they undertake to do for you and what did they do?

A. They said that they would be willing to undertake this assignment to indicate on what basis a consolidation of these two banks could and should be arranged. They asked us to send them many historical documents. By that I mean copies of reports that we had rendered to supervisory authorities over as long as a ten-year period, so that they could get a good picture of both banks over the period and see how they would best fit together.

Q. In considering the possibility of this merger, did you consider various factors which might enter into it? Did you consider various reasons for or against the possible merger?

A. The reasons for the merger?

Q. Yes.

A. Yes.

[456] Q. Tell the Court what reasons you considered in connection with whether or not this merger should take place?

A. I think a major factor in this was the growth and the changing character of our community.

We all read with a great deal of interest a study made by the General Telephone Company designed to forecast their needs for telephone. And if I recall the figures correctly there—this was made about in 1959—this study indicated that they believed they would have to have enough plant capacity to provide for a community of two hundred fifty-odd thousand people in the next twenty years.

Q. In other words, the prospective growth of the community was taken into consideration?

A. It certainly was. We were trying to plan ahead.

Q. What about the past growth of Lexington, Fayette County?

A. In the recent past at that time in 1959 and 1960 there had been considerable growth. We had changed from a predominantly agricultural and institutional and educational type community to one that had a good balance of industry. And we were becoming familiar with nationally named companies which were almost strangers to us prior to that.

Q. Did the Lexington industrial Foundation play any part in that industrial growth of Lexington?

[457] A. I think it had a great deal to do with it for two reasons: First, it made land available at a fair price; secondly, it indicated to industry that here was a town that was actually interested in having industry come to it. There had been some question about that prior to that time.

Q. Had Lexington during the few years immediately prior to 1960 undergone any industrial growth of any importance?

A. Yes. Some of the major plants we now have came in prior to that time.

Q. Did that, in your opinion, create any need for banking services which the community did not offer at that time?

A. It meant this: we felt that these companies coming in were using our banks primarily as transfer accounts, payroll, that sort of thing; but they were not bringing much actual money in to help us develop the community for the influx of people.

We had a very great increase in the census from 1950 to 1960, I think about thirty percent. It takes money to handle homes for people; it takes money for the satellite plants that a company brings in, these big plants that come in.

There was not much expansion room in many of [458] our loan possibilities.

Q. Did you think that the merged bank might assist in that situation as an answer to it in some way?

A. We very definitely thought it could. It was our feeling that it solved no purpose to try to go around getting accounts from other people in the town. We had to tap a new source.

We thought of two new sources at that time. We believed

that if we did a better job, showed a bigger front to nationally named companies—they are pretty good civic citizens—we felt that they would use us more effectively by leaving larger deposits. The main thing we felt was the possibility there of bringing in correspondent accounts of banks in central and eastern Kentucky who would use Lexington as a focal point for a considerable part of their business. That would bring lendable funds in.

Q. Did you feel that the merger of these two banks would have any effect upon the future development of Lexington, Fayette County, and central Kentucky?

A. I think it provides growth funds in the way of loans. That is important.

While I don't think that a company would come to Lexington simply because there was a large bank, a number of these companies have looked at us as a country community. [459] If there is something that we could do to increase the image of the community that way, I believe it would be helpful.

Q. Did you hope by this merger to be able to attract additional deposits to the merged bank?

A. We did. We thought we were—we had a possibility, a good possibility, of taking two sources, one almost new in correspondent banking, and the other in the large national accounts.

Q. Were those the two principal sources from which you hoped to obtain additional deposits?

A. They were.

Q. Based on your banking experience and your familiarity with the situation in Lexington, tell the Court whether or not in your opinion tapping of those two additional sources—tell the Court how it would affect the other competing banks in Lexington, if it would affect them?

A. I believe it would have only a favorable effect. I think we would be going out getting funds that would not have been available any other way in tapping those two sources. If we bring more people in here, for new houses, for new appliances, for all the range of things that new people have to buy, they will take bank accounts, and the [460] other banks will certainly get their part of it.

Q. Did you feel the merger would be beneficial to the merged bank over the situation existing as to the two separate institutions?

A. Yes, sir.

Q. In what fields?

A. I think it provided a depth of management. There were some fields that management in the Security were stronger in than we were. I felt it gave a broader horizon for our people to develop themselves. It has been our policy for a long time to develop people and to promote from within. I thought it would further that.

Q. Now, did you think any benefit could be obtained by the merged bank in automation of your processes of handling your daily business?

A. I think that there would be operational benefits as a result of that. It has already been testified here that it is a very expensive operation. We have studied it. It appears that it will be available sooner to a larger institution that can make a better use of it.

There have been developments since we did merge, however, that would make me feel that it is not as far away from banks of any size as it was.

Q. What about the result of the merger on the trust [461] departments of the merging banks into the trust department of the merged bank?

A. I would feel that there might be a possibility there of letting a man specialize to a larger extent in one field than in two fields. We would, I think, be enabled to give better service to that extent.

Q. You would hope to improve service that way?

A. That is right.

Q. What was your feeling with reference to the competitive effect as to larger trust accounts?

A. We felt that at that time as a merged institution we would have a much better competitive position with those folks who might be thinking about Louisville or maybe Cincinnati for some types, or other cities.

Q. Mr. Miles, are those the principal reasons or purposes that you had in mind in considering the consolidation, or are there others?

A. I believe those are the principal ones, sir.

Q. In considering this consolidation, was it necessary to take action of that kind in order to protect the depositors or shareholders of either of the two merging banks?

A. I think that was of no consequence.

Q. Mr. Miles, was there any purpose on your part [462] or so far as you know on the part of any of the officers of either of the merging banks to create a monopoly in banking or any of its functions in Lexington?

A. There was no thought of that whatever.

Q. After you received the report from the Morgan Trust Company with reference to this merger, what steps were taken by the two banks?

A. Well, there were some areas that had to be decided on on the local level. Those were ironed out with very little difficulty. The Boards of Directors of each bank agreed that this should be done on the basis finally indicated by the Morgan Guaranty. And then from then on, it is a pretty well definitely set out procedure. We followed the forms given us by the Comptroller of the Currency. It had been decided that the surviving bank would be a national bank.

Our only contact with any supervisory authorities was the Comptroller.

We asked for advice and counsel as to how to proceed. We were given many mimeographed forms which we followed.

Q. Did you file your formal application?

A. We filed the formal application on December 1, 1960.

[463] Q. And was it submitted to the shareholders and the Boards of Directors of the banks?

A. Subsequently it was submitted to the Boards and the annual meeting of the shareholders and passed.

Among the other things in that mimeographed form that were required were advertisements to the public and so on. All of those were accomplished. We reported back again in the required form that all of these things had been done. The Directors approved. The shareholders approved. And that was it.

Q. Did you receive any notification thereafter from the Comptroller as to what he had done about your application?

A. Yes, sir. On, I think, February 24th, I received a telephone call from him saying——

Q. Without repeating the conversation, what was it?

A. Saying it had been approved.

Q. What action did you take then?

A. We had a meeting of a group to decide the date, because the Executive Officers had already been directed to proceed with it, because all interested groups had approved it. And we set March 1st as the effective date. We had previously requested in the application that the effective date be January 17th.

[464] Q. Have you received any telegram from the Comptroller as to when you might start operating as a merged bank?

A. Yes, sir.

Q. What date did he fix.

A. March 1st.

Q. What action did you take as a result of that communication?

A. We had an initial meeting of the Board on early March 1st. We dissolved the two preceding banks, and the First Security National came into existence at that time.

Q. Have you operated since under the permission of the Court in this action as a merged bank?

A. As a merged bank, following the directions of the Court, yes, sir.

Q. Mr. Miles, what effect, if any, did you consider and do you now consider that this merger would have on competition with the other banks in Lexington?

A. I don't think there has been any difference at all. I expect it to be keener.

Q. There are various regulations which affect the methods by which one commercial bank can compete against another, are there not?

A. I have the feeling, sir, that we are the most regulated industry. That is my feeling.

[465] Q. Do those regulations affect the manner in which you can compete against other banks, other commercial banks?

A. They affect practically everything we do. And certainly the answer is yes.

Q. Those regulations have already been detailed in evidence, and I won't take the time to repeat that. But as a result of those regulations, what are the methods by which commercial banks do compete against each other and in what fields do they compete?

A. Almost the only thing that they have left us is the matter of service. And that applies to practically all fields.

Q. Is price a major factor in bank competition?

A. In my opinion, it is a very minor factor.

Q. Does some competition in that method or by that method exist?

A. I am sure there is some competition there, yes, sir.

Q. It is your feeling that it is minor, you say?

A. I do.

Q. What, in your opinion, would be the effect if a commercial bank raised its interest rate substantially above the rate charged by other banks in the community?

A. Well, as soon as it got noised about, I think we [466] would lose a lot of loans.

Q. What would be the effect in your opinion if one bank attempted to lower substantially the interest rates charged in general in the community?

A. Well, I would have to agree with other testimony that has been brought out here; first, we would run out of money real soon; and, second, we would have the greatest group of disgruntled customers whose rates were not lower. We would have a real problem on our hands.

Q. Now, in the matter of service, you say in your opinion that is the principal method by which banks compete with each other.

A. Yes.

Q. Has the merger in your opinion in any way affected the service which any of the other competing banks in Lexington can give to their customers or to the public at large?

A. I don't know of any way.

Q. What has been your experience as to what other banks do if one bank improves its service in a particular field?

A. I think very shortly the others who are aggressive and

interested in keeping their position will increase their service, and the public interest will be better [467] served.

Q. What do you think, Mr. Miles, is the principle which lies behind the regulation of competition between banks?

A. I think there are two reasons. The principal one is to preserve a safe banking structure. And if there is not regulation of competition, some of us would do—some of us might do foolish things. We might take marginal loans; we might buy marginal securities; and the whole banking structure would be hurt. If any one bank in an area is hurt, they are all hurt. That is number one.

The second point is that I think the credit supply as it ties in with our national economy is of very great importance. And regulation is a part of that.

Q. Are your banks subject to periodic inspections by regulatory agencies in any form?

A. We normally expect two examinations a year by the national bank examiners. In addition to that, we have a C.P.A. firm to make an audit of our bank periodically.

Q. The amount of interest which you can charge, the maximum amount of interest which you can charge to individuals, is, of course, fixed by the usury laws of the [468] State of Kentucky, is it not, Mr. Miles?

A. That is correct.

Q. Are there any regulations which affect the minimum which you can practically lend money for in your community?

A. I don't know of any regulations. Common sense and the national picture would pretty well set the national prime rate as a sort of a floor. Each individual bank has to look at its own supply-demand situation with respect to funds at a particular time to see whether or not they want to get more loans.

Q. Do you feel that the law of supply and demand of money in a lending bank and the demand on the bank in that community for loans has anything to do with the fixed interest rate?

A. Yes.

Q. What about the Federal Reserve controls as affecting the supply of money for lending purposes?

A. Well, I think that ties into the national monetary policy. It is not a regulation as far as we are concerned. But there

are three things that the Federal Reserve can do to change that supply picture. First, they can raise our reserve requirements and sterilize part of the deposits saying you can't use them. Second, they can raise the rediscount rate, which means that when we go to the [469] Federal Reserve to borrow to adjust our reserve position, it costs us more. So we would be less likely to lend. And then, third——

Q. Pardon me right there.

Would you explain very briefly for the record what reserve requirements are?

A. Yes. A country bank—and we are one—is required to keep 12 percent of its demand deposits either in till cash or on deposit with the Federal Reserve, and 5 percent of its savings deposits.

Q. That, of course, affects the amount of money you have left to make loans out of, doesn't it?

A. Yes, sir.

Q. So that affects the supply?

A. It does.

Q. Go ahead. I didn't mean to interrupt you.

A. I was talking about the third one which is used every day; which is the Government Federal Reserve open market policy. They sell securities in the open market to take lendable funds away. They buy securities in the open market, taking securities away from owners and paying them with money which puts it into the lending supply possibility.

Q. Do good banking principles require any restriction on the amount of money that you lend on the basis [470] of the ratios between loans to capital and loans to deposits?

A. Yes, they do. I think there is nothing written on that. Each bank sort of has its own ground rules based on past conditions with which they are familiar.

We, of course, look at the national figures. Not that there is any average bank; but if you are away from the average too far, you say "why?" So that that is important.

We will see the examiners looking at those figures and seeing their thoughts change from time to time as national conditions change.

Q. Do your examiners take up with you the question of your

ratios of loans to capital and loans to deposits if they feel you are getting out of the field of sound banking in those matters?

A. Yes, they do.

Q. Have they done it?

A. It has been discussed with us.

Q. Did they discuss it with you prior to the merger to some extent?

A. Yes, they did.

Q. What about the matter of liquidity, does that affect the amount of funds available for lending purposes [471] so as to affect the supply?

A. Well, may I say that liquidity to me is the sum of what we are required to keep unused, that is, cash, and the Federal Reserve, plus how much more we think is necessary to keep us in the position we like to be in. It seems over a period of time that we will run pretty close to twenty percent of our deposits either in cash, in the Federal Reserve, or in deposits with our correspondent banks—there I mean the city correspondents—throughout the country.

Q. Mr. Miles, after taking into consideration the maximum fixed on loans to private individuals, the maximum interest that can be charged by the usury laws, and the maximum interest that can be charged practically and the primary interest that can be charged practically by banks in view of all these regulations, state to the Court whether or not the field in which one bank can compete against the other by way of interest rates is large or small?

A. In my opinion it is very small.

So many of the borrowers realize that it is a deductible item for income taxes; and in a lot of cases it cuts it in half anyhow.

Mr. Odear. If your Honor please, that is as far [472] as I am going in that particular field.

Shall we adjourn at this time?

The Court. It is 12:00 o'clock. We will recess until 1:30.

(Whereupon, at 12:00 o'clock noon, the Court recessed until 1:30 o'clock p.m.)

[473] *Afternoon Session (1:30 p.m.)*

The COURT. I suppose you gentlemen are ready to proceed.

Whereupon, LEROY MILES the witness on the stand at the taking of the noon recess, resumed the stand, was further examined and testified as follows:

Direct examination (resumed) by Mr. ODEAR:

Q. Mr. Miles, I believe you previously testified that for the last few years, at least, Lexington banks in general, and your bank included, were pretty well loaned up on the basis of ratios between loans and capital, and loans and deposits. Is that correct?

A. In general that is true.

Q. If that is true, why do you think it would be beneficial to you to get into a new field of loans—and I have reference to loans to these larger national concerns?

A. Those large national concerns which would be applying for credit know that it is routine to leave what we refer to as a compensating balance with us.

Q. Will you explain to me what compensating balances [474] are, how that works?

A. There are a number of companies that will say—if they are applying for credit: "We will leave a 15 percent compensating balance with you."

Q. What does that mean?

A. That means that if they are borrowing $100,000, they will have a minimum of $15,000; and they will keep that pretty regularly, whereas they will be in and out and will not use their credit line for the entire period.

Q. In other words, does it help to create additional deposits?

A. Yes, it does.

Q. And those deposits, of course, are available for all the lending functions of the bank?

A. That's correct.

Q. And you have also testified that by this merger, you hope to seek and obtain additional balances from correspondent banks. Is that correct?

A. That's right.

Q. What can you do with each dollar that is deposited with you by a correspondent bank in the way of making other loans?

A. That sort of a balance adds to our reserve, which can be compounded. We could lend more than just that one, [475] because it is a basis for a loan base.

Q. Let's suppose that you obtained a new correspondent bank account where they kept on deposit with your bank a bank balance of, let's say, $10,000. How much approximately would that make available to you for general lending purposes, that balance of $10,000?

A. I would say it would be possible, based on our feeling that we have got to have 20 percent reserves, that we could lend four or five times that.

Q. Four or five times the——

A. $10,000; that's right.

Q. Are those the two principal fields in which you are seeking new funds by the merger?

A. Those are the majopones.

Q. Mr. Miles, I would like to talk to you briefly about the geographic markets of your business. I would like to go over with you for that purpose the various fields of banking and have you tell us about the geographic location of the customers in those fields.

Starting out with one of the smaller ones, Special Checking Accounts: What would be the geographic location of your customers in that field?

A. Fayette County.

Q. For a customer in that field, what alternative sources [476] of doing that business would the customer have?

A. He would have four other banks in Lexington in which he could have a checking account. I do not know how many of them have special checking account services.

Q. That would be generally available for him, however, in Lexington, Fayette County, would it not?

A. Yes.

Q. Passing on to Demand Deposits or the so-called IPC Deposits—which I understand means deposits made by individuals, partnerships, and corporations—what would be the geographical location of your customers in that field?

A. A very great majority would be limited to Fayette County. However, the larger the deposit in that particular

field, the greater would be the possibility of that depositor going to another city.

Q. What would be the geographic numerical alternatives for a person, firm, or corporation who wanted to make a demand deposit?

A. Four other banks in Lexington, and then the field is wide open after that.

Q. As a matter of practice, would any of those deposits of that type go to banks outside of the City of Lexington?

A. They would.

Q. The Correspondent Bank Accounts—by that I [477] mean banks who keep deposits with you: What would be the geographic location of your customers in that field?

A. I would say generally Central and Eastern Kentucky.

Q. Would that be limited to Lexington and Fayette County?

A. No.

Q. As a matter of fact, it would be practically entirely out of that territory, wouldn't it?

A. That's right.

Q. What are the alternatives which a correspondent bank in Central and Eastern Kentucky would have for establishing a correspondent bank account?

A. I would say Huntington, Cincinnati, maybe Knoxville, Chattanooga.

Q. Louisville?

A. Louisville.

Q. Now, in the field of Time Savings Deposits: Geographically where do your customers come from in that field?

A. The very great majority of them would be Fayette County, though there are a number out of that.

Q. What would be the alternatives for a person desiring to make a time deposit in a commercial bank?

A. Four other banks in Lexington, and any other bank that would accept a time deposit.

[478] Q. In the case of larger time deposits, is there any actual competition in that field with the banks in Louisville and Cincinnati? Or do you know?

A. I don't know of any definite instances. I have had a recent call from a bank in Indiana asking if we would accept a time deposit.

Q. Commercial and Industrial Loans: What would be the geographic location of your customers in that field?

A. Again, generally Fayette County. A larger company might have access to banks outside—Cincinnati and Louisville, for example.

Q. Borrowers from your bank: Would they come mainly from Fayette County in that field?

A. The majority of them would.

Q. But as for alternatives, they would have the other Lexington banks, say, and the larger field, Cincinnati, Louisville, and other cities?

A. That is correct. And in our thinking, we felt that the introduction of I. 75 and I. 64 will in effect make the city banks closer to Fayette County customers.

Q. What is I. 64 and I. 75?

A. Those are the two new interstates that intersect almost in Lexington?

Q. You are speaking of the highways?

[479] A. Highways.

Q. Real Estate Loans of all kinds: What is the geographical location of your bank's customers in that field?

A. The very great majority, Fayette County. Some very few outside of Fayette County.

Q. What would be the alternative choices to other commercial banks for persons desiring that type of loan?

A. For Fayette County, generally it would be the other four commercial banks here. For other counties, the banks in their own county seats.

Q. Do you know whether or not many loans are made on real estate in Fayette County by commercial banks outside of Fayette County?

A. I don't have any facts and figures. I would guess not.

Q. Loans to Financial Institutions: Does your bank make such loans?

A. Yes, we do.

Q. What would be the geographical area of your customers in that field mainly?

A. Generally the home office of those companies is in one of the major cities, but I believe in almost all cases there is a

local office which gives us the connection with the national office.

[480] Q. There again, what alternatives do borrowers in the financial institution field have as to other commercial banks?

A. Certainly the four in Lexington, and the national concerns have hundreds of banks probably, in addition to the commercial paper market.

Q. In the field of loans to brokers and dealers in securities, do you make that type of loan?

A. We do.

Q. Where are your customers located in that field?

A. Some in Lexington; some in the major cities.

Q. For your customers in that field, what alternatives do they have for obtaining that type of loan geographically?

A. The four other banks in Lexington, assuming they were interested in that kind of loan. And then again, depending on the size of their needs, it is conceivable that Louisville and Cincinnati banks would be interested. They are primarily on a collateral basis and would be good loans.

Q. In the case of loans to farmers, do you make that type of loan?

A. We do.

Q. Where are your customers located in that field?

A. Primarily Fayette County.

Q. What alternative do farmers in Fayette County have [481] on loans of that type?

A. The four banks, the Federal Land Bank, the Production Credit Association, the Farmers Home Administration are all I can think of at the moment.

Q. And other types of loans such as loans to individuals and for the purchase of retail goods, FHA Title I loans, and various loans of all those different types, generally your customers come principally from Fayette County?

A. They do.

Q. What alternatives do persons who desire those types of loans have?

A. Insurance companies for mortgage loans——

Q. I am talking about limiting it now to other commercial banks.

A. The four banks.

Q. Mr. Miles, based on your training, education, and banking experience, would you say that five alternative choices of commercial banks in Lexington or Fayette County are or are not sufficient to enable a prospective borrower to determine whether or not he has a bankable loan?

A. I would say it is definitely adequate.

Q. Mr. Miles, are there fields in which non-banking sources compete with commercial banks in Lexington, Fayette County, for business?

[482] A. There are.

Q. Could you state some of those for us? I call your attention to particular fields. For example, are you in any type of competition with life insurance companies?

A. Yes, sir.

Q. Tell the Court what that is.

A. We are in competition with them in mortgage loans; in loans on the cash value of policies; to some extent for investment because people are sold insurance policies occasionally on an investment basis; businesses secure term loans from insurance companies. I think that is about it.

Q. What about mortgage correspondents for lending institutions such as colleges, schools, and trust funds?

A. There are several of those in the local area who compete.

Q. Are you in competition with those?

A. We are.

Q. What about savings and loan associations?

A. Definitely in competition two ways: First, for the saver's dollar; and, second, for mortgage loans. Another one, for FHA home improvement loans.

Q. Is that what is generally know as FHA Title I loans?

A. Yes, sir.

[483] Q. What about credit unions?

A. I have seen local figures that the credit unions that we know of have about $4 million in them. They lend that money. People put it in there to earn interest. They could put it in our bank to earn interest. They secure loans from the credit union. They could secure those loans from us.

Q. In those fields do you feel that you are in competition with them?

A. We are.

Q. What about small loan companies?

A. To a considerable extent we are in competition with them. We have commented many times in reading the local credit bureau report of names we see in there that we are confident would be eligible for bank credit if they requested it.

It amazes us sometimes to see the number of school teachers and staff members at the University whose names appear in those lists. I am sure we would make them loans.

Q. You feel that you are in competition with them?

A. We are.

Q. What about finance companies?

A. I assume there you are talking about sales finance, like GMAC?

Q. That's right.

[484] A. Definitely so, for the automobile financing business. That is the major thing. We are in competition with them.

Q. What about equipment financing in general?

A. Would you refer there to household equipment, refrigerators, that sort?

Q. Yes.

A. Yes, I would say we would be in competition with firms like the General Electric Credit Corporation and so on.

Q. Particularly in the field of automobile financing, tell the Court whether or not that is small or extensive.

A. It is very extensive. It is tough competition.

Q. Is it a lucrative field of loans?

A. It is.

Q. Are you in any competition with the United States Treasury in any field?

A. Yes, we are, certainly in the sale of United States Savings Bonds, for which banks act as agents for the United States Treasury.

Q. For the savings dollar?

A. For the savings dollar, yes, sir.

Q. What about trade credit extended by the sellers of goods?

A. To the extent that the customer does not have to pay cash and is carried for, let's say, a thirty-day period by [485] the seller of the merchandise, it is conceivable that that might

have a bearing on competition with us. We note that the merchants are developing new credit arrangements whereby people have revolving credit available to extend it over a period of time. That definitely competes with us.

Then the local retail seller of that merchandise who is carried by the wholesaler or the factory receives credit there, which he could borrow from us so we are in competition.

Q. Are you in competition with individuals in any field of banking?

A. There are some few individuals who seek mortgage loans for income.

Q. What about in the trust field?

A. We are certainly in competition, as has been indicated so clearly, with individuals and also with trust institutions in other cities.

Q. In the trust field?

A. In the trust field.

Q. Mr. Miles, in contemplating this merger, did you take into consideration the effect which this merger might have on competition with other commercial banks in Lexington?

A. That was of no consequence to us.

Q. Did you think that it would adversely affect the competitive status of the other banks in Lexington?

[486] A. No, we thought that we could help do a job for the community which would be to the benefit of all of them.

Q. What has been your observation based on your banking experience as to the ability of smaller banks to compete with larger banks for loans and for deposits?

A. I think the figures that we have are very conclusive in themselves to show that smaller banks can grow in the face of competition from larger banks.

Q. Is that your observation based on those figures and what you have seen and from your education, training, and experience?

A. It is.

Q. I would like to call your attention to Exhibit No. 22.

Mr. ODEAR. Gentlemen, that is the chart and graph showing the dollar value of deposits held by each Lexington bank and percentage of all commercial bank deposits which are held by each bank in Lexington from 1935 to 1960.

By Mr. ODEAR:

Q. Would you refer to that chart, please, Mr. Miles.

A. I have it here, sir.

Mr. ODEAR. That is 22, Judge.

By Mr. ODEAR:

Q. Are you familiar with the facts and figures set [487] forth on that chart?

A. Yes, sir.

Q. What do they signify to you with reference to the ability of a smaller bank to compete against a larger one, and why?

A. They indicate very definitely that the smaller bank is able to compete. It suggests to me that banks in their size, their relative size, seem to indicate perhaps cycles of aggressiveness. That goes back to management in my thinking.

It is impressive to see that the large bank does not have a continuing trend upward, as someone might think.

In looking at the figures for First National, I am impressed with the fact that in 1942 it had 53.7 percent of the total deposits; whereas at merger time in 1960 the combination of First National plus Security gave only a 52 percent figure.

Q. What had the bank gone down to from the 53.7 percent?

A. From a high in 1942 of 53.7 percent, it got to a low in 1953 of 38.7, recovered a little bit to 1960. It was 40.1 in 1960, and between the low in 1960 it had gone up to a little in excess of 45 percent. So it would appear that there are definite waves or cycles in that.

Q. The general trend of the largest bank was in which direction—up or down?

[488] A. It was down.

Q. During that same period of time what does the chart show and what are the facts with reference to what the smaller banks were able to do with their percentage of deposits?

A. The smallest bank during most of the period had very phenomenal growth. In general that would be true throughout.

Q. I would now like to call your attention to Exhibit No. 26. That chart would show the dollar volume of all loans of Lexington banks and percentage of total loans held by each bank for the years from 1935 to 1960. Do you have the chart before you?

A. Yes, sir, I do.

Q. Have you heretofore studied it and become familiar with the facts and figures set forth thereon?

A. Yes, sir, I have.

Q. What does that chart signify to you, if anything, with reference to the ability of smaller banks to compete with larger banks in the field of loans?

A. First I note that in 1936 56.8 percent of the total loans were held by the First National Bank and Trust Company. In 1954 that had gone down to 36.6 percent—about a twenty percentage point drop.

I note that the smallest bank, starting with an extremely [489] small part in its early years, moved up to 8.8 percent of the total loans in 1960. I note that in connection with two banks that had previously merged—the Citizens and the Union—they were apparently not able to hold their loan position as they moved on from the date of the merger.

It would appear, then, that size is not the factor that indicates that a bank will have a continuing up trend in loans simply because it is larger.

Q. All right, sir, now turning to the field of bank assets, I will ask you to look at Exhibit No. 38, which is a chart showing the total assets of all Lexington banks and the percentage of the total thereof for each bank for the years 1928 to 1960.

Do you have that chart before you?

A. I do.

Q. Have you previously had an opportunity to examine that chart and become familiar with its contents?

A. Yes, sir, I have.

Q. What does that indicate to you, if anything, with reference to the ability of small banks in Lexington to compete with the large bank in Lexington?

A. It indicates that there is no constant growth trend in the large bank. It suggests that aggressive management may be a factor in increasing a percentage or in decreasing.[490] it. In general it indicates that the smaller banks have a good opportunity to grow in that field in spite of the competition of a larger bank.

Q. I now call your attention to Exhibit No. 35, Mr. Miles, and I am now directing your attention to what has occurred, if anything, by way of competition between the First Security National Bank since it was formed by the merger here in question; what have been the effects of its competition with other banks in Lexington since that merger became effective.

Do you have No. 35 before you?

A. Yes, sir; I do.

Q. Have you had an opportunity to look at it and familiarize yourself with its contents?

A. I have.

Q. What if anything does that show or indicate to you with reference to the ability of the smaller banks in Lexington to compete with the First Security since the merger?

A. It suggests that they had no problem in general in improving their position. There were some minor exceptions there. But it shows that the First Security lost a percentage position in the fields of total resources, total deposits, demand deposits, time deposits, state and political deposits. The large bank actually lost dollar figures there; and in loans, [491] not only did it go down percentage-wise, but it lost dollars of loans.

Q. So what does that indicate to you as to their ability to compete since the merger took place?

A. It would suggest that size has very little, if any, advantage for it.

Q. Now I want to call your attention to the field of competition through banking offices, including branches, of existing banks. I would like to direct your attention to Exhibits No. 9 and 10.

Mr. ODEAR. Does your Honor have those before you?

The COURT. Yes, sir.

By Mr. ODEAR:

Q. What do those two exhibits purport to show, Mr. Miles?

A. I am looking at the map of Lexington on which is shown the location of banking offices prior to merger.

The COURT. That is Exhibit 10?

Mr. ODEAR. That is No. 9, I believe, prior to the merger.

The COURT. I have some difficulty in following your exhibits. The map is the exhibit marked 10?

Mr. ODEAR. There are two maps—one marked 9 and one marked 10, your Honor, I believe. No. 9 shows the location [492] of banks and branches before the merger; and No. 10 shows the location of them after the merger.

The COURT. All right. Go ahead.

By Mr. ODEAR:

Q. On the basis of the geographical location of the banking offices before the merger, Mr. Miles, tell the Court whether or not the branches of the banks were so located as to afford direct competition with each other. I mean by that, the branches of Security Trust Company and First National Bank.

A. No, sir, there was no geographical competition between those because they were in different areas of the community.

Q. What effect, if any, will the merger or has the merger had upon eliminating competition between the branches of Security Trust and the branches of First National?

A. I see no difference.

Q. There hasn't been any, has there?

A. No, sir.

Q. I would like to ask you to look at Exhibits Nos. 40 through 55 and tell the Court what each one of those exhibits shows.

Mr. ODEAR. For the record, those are pictures of all the banking offices of all banks in Lexington, and their [493] branches.

A. Exhibit 40?

By Mr. ODEAR:

Q. Yes, take it first.

A. That is the main office of the First Security National.

Q. What is 41?

A. Shall I go ahead with those?

Q. Just go ahead.

A. 41 is the Security Branch of the First Security National.

42 is the Southland Branch of First Security National.

43 is the Chevy Chase Branch of First Security.

44 is the Eastland Branch of First Security.

45 is the North Broadway Branch of First Security.

46 is the Main Office of the Bank of Commerce.

47 is the Euclid Avenue Branch—I am not exactly sure of their terminology; it is in the Chevy Chase Shopping Area—of the Bank of Commerce.

48 is the Bank of Commerce Branch on Harrodsburg Road.

49 is the Citizens Union Nation's main office.

50 is Citizens Union's Leestown Road Branch.

51 is Citizens Union's Winchester Road Branch.

52 is the Citizens Union's Harrodsburg Road Branch.

[494] 53 is the Central Bank's main office with its new addition on Upper Street just coming into view there.

54 is the Second National's main office. I jumped the gun on that.

55 is a much better view of the Central Bank's new addition on Upper Street.

Q. Are you personally familiar with all those banking facilities?

A. With the exterior, yes.

Q. Are you familiar in a general way with the banking services that are offered by each of those branches?

A. It is my impression that the services in their branches are just about the same as those in our branches. I have this one reservation. We have safety deposit boxes in two of our branches, and I don't know about the branches——

Q. How many of them do you?

A. I meant two of our outlying branches. Of course the Security Branch downtown has safety vault facilities. But I don't know about the safe deposit facilities of the other branches.

Q. How do the physical plants insofar as you have been able to observe them of the branches of the other banks in Lexington compare with the physical plants of your branches?

[495] A. Well, we don't compare—they are a little more elaborate, I would say, than ours are.

Q. Are they at least as good as yours?

A. They certainly are that, yes, sir.

Q. Is there any competitive advantage existing in favor of your consolidated bank over the other local banks with reference to these branch banks?

A. Well, I would say there would be no competitive advantage to us.

[496] Q. Now, did you have an application pending for a branch bank anywhere on North Broadway in Lexington?

A. Yes, sir, we did. A branch on the west side of North Broadway, not far from the Belt Line in what was to have been the Northland Shopping Center.

Q. Was that location for which you had an application close to any branch bank that was operated by the Security Trust Company prior to the merger?

A. Yes. I would guess about a quarter of a mile.

Q. A quarter of a mile?

A. I am guessing there.

Q. Did you ever open the North Broadway branch?

A. The Northland Shopping Center never materialized. And we were only interested in going in with neighbors. And so we did not go into it. There is nothing but a vacant field there now.

Q. In other words, it was contemplated that there would be a shopping center built on that area; is that right?

A. Our interest was based on that being about the same sort as Eastland. But it never has gotten off the ground.

Q. It never has been even started?

A. No, sir.

[497] Q. Is your North Broadway application still pending?

A. No, sir. We renewed that for I don't know how many times. They last for six months at a time. And the last time it came up for renewal was in, as I recall, November 1960, at which time we were planning the consolidation with Security.

It did not make sense to have a competing or another branch so close, because they are right expensive operations. And so we dropped it, because there was no place to go anyhow.

Q. Since that time has construction ever been started on the shopping center?

A. No, sir, it hasn't.

Q. Tell the Court whether or not in your opinion, Mr. Miles, the public is now adequately served by branch banks in Lexington and Fayette County?

A. I believe it is, Mr. Odear. I have not made any market analysis of that sort of thing. But it seems to me when you look at a map and see where the deposits are, it looks to me like a branch is very close to most of the people in Fayette County. Somebody's branch.

Q. Mr. Miles, what has been the fastest growing bank in Fayette County in recent years?

[498] A. The Central Bank and Trust Company.

Q. How many branches does it operate?

A. It has none.

Q. Is that significant to you as to whether or not the maintenance of branch banks is necessary in order to compete with another bank?

A. It would indicate that it is not a necessity.

Q. Now, Mr. Miles, I would like to talk briefly about the effect of merger on competition in the lending fields of banking. And I would like to call your attention to Exhibits Number 14 and 15 in that regard.

Do you have them?

A. Let me be sure. I have got quite a bit of paper work here.

Yes, sir, I have 14 and 15.

Q. According to those charts, Mr. Miles, how many banks in Lexington could make loans in the various categories up to $250,000 prior to the merger?

A. As of June 30, 1960—or rather as of December 31, 1960, in the unsecured category, all six banks could make loans of $75,000 or less. Five of them could go up to $150,000. Four could go up to $250,000.

Q. After the merger how many banks could make loans up to $250,000?

[499] A. We had only reduced one in each category there.

Q. One in each category?

A. That is correct.

Q. In your opinion, based on your experience, is the maximum of three choices sufficient to enable a customer to determine whether or not a loan up to that amount is bankable, trustworthy, creditworthy?

A. In my opinion, it is adequate.

Q. With respect to loans from $250,000 up to $280,000 how many banks could make loans in that category prior to the merger?

A. Are we discussing the unsecured category there?

Q. Yes.

A. I was talking in the secured category.

Q. I am talking about unsecured.

A. All right.

Would you repeat the question, please?

Q. In the category of loans falling between $250,000 and $280,000, how many banks could make loans in that category prior to the merger?

A. Two.

Q. How many could make loans in that category since the merger?

A. Two.

[500] Q. Has the merger affected the availability of sources in that field then at all?

A. No.

Q. What about in the category of from $280,000 up to $500,000, how many banks before the merger could make loans up to $500,000?

A. Prior to the merger——

Q. That is, unsecured?

A. None.

Q. How many can since the merger?

A. One.

Q. What is the effect of this difference on competition with the other banks in Lexington, if any?

A. No difference.

Q. Is there any effect upon the competition regionally—I mean by that banks outside of Lexington—in that field?

A. Yes. There is effective competition there, because now one bank will not have to secure participation in order to make that loan.

Q. Would you say this merger then has increased or decreased competition in the fields of loans up to five hundred thousand dollars?

A. Really I don't see any difference there. The participation or lack of it is an operating benefit. The [501] customer really doesn't care much where his money comes from, whether one bank lends it all or gets somebody to help. He gets it. But the local bank will have to have a larger deposit with the correspondent that carries the participation.

Q. If at all, how is it affecting the ability of the First National Bank and Trust Company or Security to compete with banks from Cincinnati in loans up to five hundred thousand dollars?

A. In the last few months.

Q. Well, we won't get into that yet. Has it affected it generally?

A. It has helped us compete with Louisville and Cincinnati banks.

Q. All right.

Mr. ODEAR. May we approach the Bench, your Honor?

The COURT. Yes.

(Bench conference.)

By Mr. ODEAR:

Q. Mr. Miles, I show you here an exhibit——

Mr. ODEAR. Would you like to look at it, Mr. Williams?

Mr. WILLIAMS. Yes.

(The document was handed to Mr. Williams.)

[502] By Mr. ODEAR:

Q. I show you here an exhibit which sets out the credit lines extended in excess of $250,000 since March 1, 1961. And I will ask you to state to the Court what that shows with reference to how many such credit lines have been so extended?

A. It shows that 22 such lines have been established since March 1, 1961.

Q. Would you give the amount and the date of each of those credit lines without giving the name of the customer?

A. You mean the date——

Q. Refer to them by number.

A. The date approved and the line approved?

Q. The amount of credit extended and whether or not that credit has been used.

A. Number 1, March 23, $300,000 established, $300,000 used in April.

Number 2, $270,000 established April, used in November.

Number 3, $500,000 established April, a part of it used in September.

Number 4, $400,000 established in May, not yet used.

Numbers 5 and 6 are a combination that are considered [503] together, $500,000 established in May, half of it used in June.

Number 7, $500,000 established in June, $443,800 used in August.

Number 8, $500,000 established in June, $296,000 used by January 1962.

Number 9, $300,000 established in September, $286,000 used in March.

Number 10, $350,000 established in October, $200,000 of it used in October.

Number 11, $300,000 established in October, not yet used.

Number 12, $300,000 established in October, $100,000 used in January.

Number 13, $500,000 established in October, not yet used.

Number 14, $500,000 established in October, not yet used.

Number 15, $500,000 established in November, $500,000 used in November.

Number 16, $275,000 established in November, $90,000 used in December.

Number 17, $350,000 established in November, $350,000 used in December.

[504] Number 18, $350,000 established in November, $310,500 used in December.

Number 19 and 20, I believe, are duplications on there.

By Mr. ODBAR:

Q. That is one customer, isn't it?

A. That is right.

Q. All right. Go ahead.

A. Number 21, $300,000 established in January, not used.

Q. I don't believe you told us what 19 and 20 were.

A. I said that was the duplication of numbers 5 and 6.

Q. I see. All right. Go ahead.

A. Number 22, $500,000 established in January of 1962 and not yet used.

Q. Does that exhibit also show actual loans made since March 1, 1961 in excess of $250,000 which are not included in the regular line of credit as indicated by your previous testimony?

A. It does.

Q. Would you tell the Court what they are?

A. Number 23, in November 1961 $500,000.

Number 24, in November 1961 $500,000.

[505] Number 25, November 1961 $270,000.

Number 26, in April $277,350.

Number 27, in March 1961 $301,435.

Q. Once or twice I think in giving that list you said the amount of credit was five hundred. In each instance did you mean five hundred thousand?

A. I did.

Q. What, if anything, does that indicate to you, Mr. Miles, as to the community's need for a banking institution in Lexington which could lend in excess of $250,000 both by legal limit and by the availability of funds?

A. It indicates that the need is there, and the capacity existed.

Q. Do you have any information as to how often you received requests for your lending—for loans in excess of your lending limit prior to the merger?

A. I have no figures to substantiate that.

Q. Well, in general, was there such application?

A. Yes, there were.

Q. Mr. Miles, do you know what percentage of all loans made by the First National and the First Security are loans under $25,000?

A. Yes, sir.

Q. What percentage are?

[506] A. First you would like to have the separate banks?

Q. Yes, sir. Give it to us by the separate banks.

A. During 1960 the First National had 8,535 loans of less than $25,000 which amounted to 97.38 percent of the total loans.

Q. What does that indicate to you, if anything, with reference to whether or not the largest bank in Lexington was attending to the needs of the small borrower?

A. It would suggest to me that with such a predominant figure to people who borrow under $25,000, that their needs were being taken care of by the so-called big banks.

Q. I believe you have been testifying from Exhibit Number 17, have you not?

A. That is correct, sir.

Q. Would you now look at Exhibit Number 16.

A. I gave only the First National. Did you want me to proceed on that?

Q. Yes. Was that on 17?

A. Yes, sir.

Q. Give it to us for Security Trust Company.

A. The Security Trust had 1,242 loans during 1960 of less than $25,000, which was 94.23 percent, just a little bit lower than First National. And the two combined had 9,777 loans in that under $25,000 category, for 96.97 percent. [507] Just at 97 out of every one hundred loans were in that category.

Q. What does that indicate to you, if anything, with reference to how the Security Trust Company and the First Security National Bank and Trust Company were attending to the needs of small borrowers in Lexington?

A. Very close to doing the same job based on their entire lending picture.

Q. Would you turn to Exhibit Number 16 and compare those figures for the Citizens Union Bank and Trust Company?

A. Well, as of September 19, 1961, Citizens Union indicated that they had 1,429 loans in that under $25,000 category, for 93.95 percent, just a little bit less than Security.

Q. What does that indicate to you, if anything, with reference to the comparison of the treatment of small borrowers or the handling of needs of small borrowers by the largest bank and by the Citizens Bank?

A. There is very little difference in their emphasis. It would certainly indicate that the small borrowers in Lexington by three banks at any rate were being well cared for.

Q. Now, I will ask you to turn to Exhibit Number 13 [508] and see what that show, if anything, with reference to small depositors in the banks in Lexington.

A. I don't believe I have Number 13 here.

(The document was handed to the witness.)

The COURT. Go ahead, read it.

The WITNESS. "Changes in number of all demand deposit

accounts of First National by size of deposit as of dates indicated."

The COURT. I have it.

By Mr. ODEAR:

Q. What does that indicate to you with reference to the taking care of small depositors by your bank?

A. We feel we are certainly taking care of the small depositor. It shows that as of January 1961, thirty-nine and a half percent of our accounts were of less than one hundred dollars.

Q. What percentage lay in the field between $100 and $2,000?

A. The next category is the largest percentagewise, from $100 up to $1,999, 48.14 percent.

Q. Going back, Mr. Miles, to your testimony about obtaining loans for the large borrower through participation, is there any advantage to the bank of a given community like Lexington in being able to take care of that loan itself over making an arrangement with an out-of-town [509] participating bank for the large customer?

A. I think it has an operational benefit. There is no competitive advantage. As I mentioned before, the customer really doesn't care about the source of his loan. The originating bank gets it for him. And that is the end as far as he is concerned.

But the difference arises operationally, in that whenever we ask a correspondent to help us with a loan, we do feel obligated to leave more of our cash on deposit with them, thus cutting down our ability to use it.

Q. Is there any danger that at a subsequent time for a subsequent loan your customer might go to the bigger bank in the out-of-town city where the participating loan was carried for him?

A. Yes, sir, it has been done.

Q. What about the difficulties of dual bookkeeping, what effect does it have on that?

A. Some small effect.

Q. I believe you stated your application for merger was approved by the Comptroller?

A. Yes, sir.

Q. You were notified by the Comptroller to that effect, were you not?

A. Yes, sir.

[510] Q. In addition to that, I believe that approval was certified by the Comptroller to the proper Washington officials, was it not?

I show you here a certificate of his statement of such approval.

A. I have seen this basis for approval, yes.

The COURT. It is properly authenticated. You can introduce it.

Mr. ODEAR. It is a certified copy.

The COURT. All right.

Mr. ODEAR. I would like for the information contained in this to be made available to your Honor. I don't know whether you would like for me to have it read.

The COURT. Let him read it.

Are you going to file it?

Mr. ODEAR. Yes, sir.

The COURT. Let him read it.

By Mr. ODEAR:

Q. Read that to the Court.

A. This is headed "Advance extract from annual report to the Congress of the Comptroller of the Currency."

And in it he indicates, sir, the capital stock, surplus, and so on, of each of the two banks before he gets down to his basis for approval.

[511] Q. Read the basis for approval.

A. "The financial history and condition of each of the banks involved was excellent. Both had records of long and successful operation, and both had high standing in the community.

"The adequacy of capital stock and future earning prospects were excellent. The general character of management which would be provided in the combined institution would be of high grade and strengthened by the consolidation. The convenience and needs of the community would be served better by the combined institutions than by their operations as separate entities.

"The State of Kentucky in recent years has enjoyed very important industrial growth, and outstanding national companies have moved portions of their operations to the State. The industrial banking situation in Lexington has been affected in material degree by this fact. It is clear that Lexington is of growing importance in the industrial field, and the State of Kentucky is having a new birth of modern high-grade industrial development. This makes desirable and necessary the development of banks large enough and with sufficient strength of organization to attract and hold deposits of the larger companies which have come and will come to Kentucky. All of the factors above mentioned were definitely favorable to approval of [512] this consolidation. As to the competitive factors, it was believed that the effect of the proposed consolidation on competition would not be unhealthy locally, and that as regards state and interstate relationships, it would be definitely beneficial, while the combined bank would be the largest institution in the City of Lexington, having 53 percent of deposits, the other four institutions have had good growth in recent years and should continue to hold their own and make progress after the consolidation. Comments relative to the concentration of trust business in the two institutions must be viewed in the light of the fact that this represents the accumulation of many years in which the other banks took little or no part in this field, and that currently they are receiving substantial amounts of this type of business.

"Also it is of importance that a major portion of new trust business developed in Fayette County in recent years has been handled by individual trustees. Thus it appeared that the consolidation would not adversely affect competition, and that the economic welfare of the Lexington community and the State of Kentucky would be served by its consummation. Accordingly, it was found that the proposed transaction would be in the public interest."

Mr. Odear. I believe that is all I care to ask.

[513] You may cross-examine.

I do want to file that as a part of the witness' testimony.

The Clerk. Exhibit Number 93 for the Defendant.

(The document above mentioned was filed with the Clerk and marked Defendant's Exhibit Number 93.)

Cross-examination by Mr. WILLIAMS:

Q. Mr. Miles, do you know when the Comptroller prepared that letter?

A. No, sir, I don't.

Q. Did you see it before the consolidation took place?

A. Sir?

Q. I withdraw that question.

At this time, Mr. Miles, I would like to show you Government's Exhibit Number 108. And I would like to ask you to read it.

I am sorry. I am referring to Government Exhibit Number 109. I would like to ask you to read the summary contained on the last page. Then I want to ask you some questions, if I may.

The COURT. Is that 108?

Mr. WILLIAMS. 109, your Honor.

[514] Mr. ODEAR. You asked for a portion of 109?

Mr. WILLIAMS. I wanted Mr. Miles to take a look at 109 and then I wanted to ask him some questions about it.

Mr. LISLE. You are not offering 109 in evidence?

Mr. WILLIAMS. 109 is in evidence.

The COURT. 109 is not in evidence, is it?

Mr. ODEAR. No, sir; it has been tendered, subject to our objection as to competency and relevancy.

The COURT. I don't know; that may be true.

Mr. ODEAR. That is true.

The COURT. I haven't passed on it. Are you objecting to it now?

Mr. LISLE. Yes, sir, we are objecting to it now.

The COURT. All right, I will hear you. I have it here before me.

Mr. LISLE. We are objecting on the grounds of competency and relevancy. Under the law the official charged with the responsibility of passing upon this application was the Comptroller of the Currency.

A certified copy of his report has been introduced. This is simply a report to him, unverified, unsworn to, with no opportunity on behalf of the Defendants in this case to cross-examine in any way the author of this report, without any opportunity

on behalf of the Defendants to know what [515] information the author of this report had before him when he prepared it.

And as far as this case is concerned, this report would be wholly hearsay, without any opportunity for cross-examination on the part of the Defendants.

We submit that it is not competent or relevant as evidence in the case.

Mr. WILLIAMS. May I be heard, your Honor?

The COURT. Yes.

Mr. WILLIAMS. In the first place, the stipulation entered into states that the parties stipulate that it is a genuine, authentic, reproduction of the report of the FDIC.

The COURT. Was that put into the stipulation?

Mr. WILLIAMS. Yes, sir.

The COURT. Let me see that phase of it.

Mr. LISLE. There is no question that the petition is a correct copy; but we say it is still hearsay and we have no opportunity to cross-examine on it.

The COURT. I want to see the stipulation. He said you said this was correct.

Mr. WILLIAMS. Your Honor, it is Exhibit No. 1 in the Government's documents.

Mr. LISLE. We do not admit the truth of what is contained therein.

[516] Mr. WILLIAMS. On page 8, your Honor, the stipulation is listed in paragraph D.

The COURT. On page 8?

Mr. WILLIAMS. Yes, your Honor.

The COURT. "That the information contained in the charts and tables listed below is true and correct, and such charts and tables may be offered in evidence on behalf of Plaintiff without further proof of the facts therein contained, subject to objection of either party by reason of competency, relevancy, or materiality.

"The documents listed below are authenticated copies of what they purport to be and may be offered in evidence without further proof of authentication, but subject to objection by the Defendant by reason of competency, relevancy, and

materiality; but Defendant does not admit the truth of any information stated in said documents."

Mr. LISLE. This is a document and not a chart or table.

The COURT. Sir?

Mr. LISLE. This is a document and not a chart or table.

The COURT. I overrule the objection.

By Mr. WILLIAMS:

Q. Mr. Miles, will you turn to the last page of [517] Government Exhibit 109. You will note there it says "Summary."

A. Right.

Q. Would you read that paragraph following the "Summary," please?

A. "Applicant is now the largest bank in Lexington"——

The COURT. I think in order to give some sense to it he ought to read what this is right at the start.

Mr. WILLIAMS. Would you prefer I read it, your Honor?

The COURT. Read it. What is it? Let him read what it says it is.

By Mr. WILLIAMS:

Q. Mr. Miles, would you look at Government Exhibit 108, which precedes 109.

A. Yes, sir.

Q. State whether or not that is a letter from Roy A. Coburn, General Counsel, Federal Deposit Insurance Corporation, Washington, D.C., to the Honorable Lee Loevinger, Assistant Attorney General.

A. Yes, sir, it is.

Q. In paragraph 2 does not the letter state: "In accordance with your request we are enclosing herewith two photocopies of the report of the consolidation to the Comptroller of the Currency pursuant to Public Law 86-463 on the [518] proposed merger involved in the above litigation"? Is that correct?

A. That's correct, sir.

Q. And the litigation is identified as United States versus The First National Bank and Trust Company of Lexington, et al. Is that not correct?

A. Yes, sir.

Q. Now would you turn, Mr. Miles, to the Summary at the end of the document, No. 109, and read that, please?

A. Yes, sir. "Applicant is now the largest bank in Lexington and Security is fourth in size as to deposits and loan volumes. Together their IPC deposits and loan volumes exceed similar categories for the other four Lexington banks combined. These participating banks are in a highly competitive position with each other.

"The proposed consolidation is reportedly aimed to generate considerable deposit business not now held by local banks. Any estimate thereof will be highly conjectural. The consolidation also reportedly would develop more lending capacity. The participating banks already possess relatively high portions of their respective total resources in loans.

"Deposit growth necessary to permit any prudent expansion of the loan volumes would need be sizeable, and, as such, further the concentration of deposits in the [519] consolidated bank as related to other banks in Lexington. Moreover, the legal lending limit to an individual borrower on an unsecured basis would actually be less in the consolidated bank than the present combined legal limits of the respective participants.

"The applicant now has the largest lending base of the Lexington banks, and Security's is equal to any of the other four banks. Consolidation of the respective trust departments would follow a similar pattern of further concentration, but to a much higher degree.

"Based on available information, participating banks hold by far the major portion of trust assets of Lexington banks, and the consolidated bank would hold about 95 percent of all trust assets in Lexington banks."

Q. And the next paragraph, please?

A. "Supervising Examiner Dunn has expressed the opinion that the evidence indicates the proposal would be a tendency toward monopoly. Under the circumstances the effect of the proposal on competition appears to be adverse, although as yet there is no conclusive evidence of a tendency toward monopoly."

Q. Thank you, Mr. Miles. Would you agree or disagree with the Federal Deposit Insurance Corporation in the idea that, in

order to make larger loans, you must first generate [520] substantial deposits?

A. Yes, sir.

Q. I believe you testified that you envisioned the ability to make additional loans as a result of the merger?

A. Yes, sir.

Q. Wouldn't it be true that it would be putting the horse before the cart if you make a big loan and then expect to get back some corresponding balances from the lendee?

A. I am not sure which would come first there, Mr. Williams. I agree if we went haywire in making loans, hoping we would get deposits, we would be stupid. But I don't think we would proceed that way.

Q. Didn't you testify earlier that you expected to make larger loans as a result of the merger to some of these larger corporations?

A. Yes, sir.

Q. And in return you would get some corresponding balances?

A. That's right.

Q. You would have to proceed fairly cautiously if you were already loaned up, would you not?

A. I think we would proceed cautiously. I hope we have learned that sort of a lesson in almost a hundred years of existence.

[521] Q. Now, Mr. Miles, I would like to show you Government Exhibit 107.

Mr. LISLE. For the record, if the Court please, we desire to make the same objection on the same grounds with reference to this exhibit as we did to the other.

The COURT. That will be overruled. Is this a part of the same report to the Comptroller?

Mr. WILLIAMS. No, your Honor. This is a report of the Board of Governors of the Federal Reserve System to the Comptroller of the Currency dealing with the consolidation of the First National Bank and Trust Company of Lexington, pursuant to Public Law 86-463, which is an amendment to the Federal Deposit Insurance Company Act.

The COURT. I am familiar with that.

By Mr. WILLIAMS:

Q. Do you have that document in front of you, sir?

A. I do.

The COURT. You said that 109 which you just read was a report from whom?

Mr. WILLIAMS. The Federal Deposit Insurance Corporation, your Honor, to the Comptroller of the Currency dealing with the consolidation.

The COURT. Is that required by this amendment?

Mr. WILLIAMS. Yes. The statute requires a report [522] from the other two banking agencies.

The COURT. All right. This is the Federal Reserve System, the one you are talking about?

Mr. WILLIAMS. Yes, sir.

By Mr. WILLIAMS:

Q. Mr. Miles, would you turn to the last page of that document and read the Paragraph B marked "Conclusion"?

A. "The proposed consolidation would result in the elimination of the fourth largest of the six banks in Lexington and in a substantial lessening of competition. It would result in a substantial concentration in one institution of banking resources and fiduciary business in Lexington and Fayette County."

Q. Mr. Miles, do you agree with that statement?

A. No, I wouldn't agree with that. I have the feeling that if we had had an opportunity to talk to the Federal Reserve people and the FDIC people, we might have presented the other side of the case. We thought our contact was only with the Comptroller, which the law seemed to say to us.

Q. Mr. Miles, isn't it a fact that representatives of the FDIC and the Federal Reserve Board came to Lexington prior to this consolidation?

A. I talked for a few minutes with a representative of the Federal Reserve, who told me he had been around talking [523] to the other Lexington banks and was then finishing up with me. I don't recall that he asked me any questions, Mr. Williams.

Q. But he did talk to you in connection with the proposed consolidation, did he not?

A. Yes, sir.

Q. And he told you that he had talked to the other bankers in the city about it, did he not?

A. That is correct.

Q. Did the Comptroller to your knowledge send anyone to Lexington to confer with the banks in connection with the consolidation?

A. The Examiner who came in shortly before—I think it was December 1960; I am a little hazy on dates there, but certainly before the consolidation—asked many questions.

The Comptroller frequently works through his local examiner.

Q. Was it not a routine examination, to your knowledge?

A. No, sir, it was a little bit more than that. We had not had our second examination that year. I called the Chief Examiner in Cleveland and said, "Won't you please get this other examination in because we are contemplating a merger and we would like to have your complete record on it."

It seems to me that the examiner who has been working on us and knows our innermost secrets would know far more than [524] the others, who never examine us. They only talked to the competition generally.

Q. Mr. Miles, you testified previously in this case, have you not, on deposition?

A. Yes, sir.

Q. For the purpose of refreshing your recollection, I would like to show you at this time your deposition and ask you some questions.

Mr. LISLE. Could you identify the question number, and page, please?

By Mr. WILLIAMS:

Q. Page 183, Mr. Miles.

A. I have it.

Q. Would you look down at the bottom of the page to Question No. 702 and read that, please?

A. "Q. 702 But this was a routine examination, was it not, similar to all other examinations?" And I replied, "The same thing."

Q. Would you read the top of page 184, Question 703?

A. "703 Q. There was nothing unusual about this exam-

ination from these people. Correct?—A As far as I am concerned, there was not."

Q. Question 704?

A. "Did they ask you any questions with respect to competition while they were here?—A Not that I recall."

[525] Q. Does that refresh your recollection, Mr. Miles?

A. I don't know anything any different, Mr. Williams. I called and asked for them to be sure to give us another one in the year. We normally expect two examinations a year; but when they had been running short, they have the privilege of examining a national bank, if it is on a certain list, three times every two years.

We really wanted the benefit of an examination then before we started to merge, so I called and asked about it.

Q. The examination was made at your request, was it not?

A. That is a little bit difficult to say. I requested it. They would like to have done it anyhow, but I did request it, yes.

The COURT. Are you through with the witness?

Mr. WILLIAMS. No, your Honor. I have a number of other questions.

The COURT. Before you get away from the question that you asked him about whether or not he agreed with this Conclusion: This conclusion is a dual conclusion. "The proposed consolidation would result in the elimination of the fourth largest of the six banks in Lexington."

The WITNESS. That is true.

[526] The COURT. That wasn't an elimination of that bank, was it? Somebody called it an elimination.

The WITNESS. I guess they were assuming that there was one less bank. That is the only way. That is all.

The COURT. But the whole assets were still there and the whole business of the bank was still there, united with the other bank.

The WITNESS. Correct, sir.

The COURT. So you don't agree with it being an elimination of the bank?

The WITNESS. No, sir. In that sense, no.

The COURT. Do you agree that it resulted in a substantial lessening of competition?

The WITNESS. No, sir, I don't think it did.

The COURT. That is what I wanted to find out. I didn't hear you ask that.

By Mr. WILLIAMS:

Q. Mr. Miles, as a result of the consolidation, all competition that existed between the two banking institutions ceased, did it not?

A. That is, between the First National and the Security?

Q. That's correct.

A. Yes, sir.

Q. Mr. Miles, earlier in your testimony counsel showed [527] you a document entitled, "Credit Lines Extended in Excess of $250,000 Since March 1, 1961." Do you have that before you?

A. I will in just a minute, yes, sir.

Q. Would you look down the list of those accounts and identify as best you can the number that, prior to the consolidation, had accounts with both of the consolidating banks?

A. I am unable to do that, Mr. Williams. I don't know.

Q. Let me ask you about No. 3.

A. I think so. I cannot be positive.

Q. That is your best recollection?

A. Yes, sir.

Q. How about No. 7?

A. Yes, sir.

Q. No. 14?

A. I don't know.

Q. It is your recollection, is it not, that at least a number of those companies had a line of credit with the two consolidating banks?

A. Yes.

Q. Mr. Miles, earlier in your testimony you looked at some charts shown you that indicated, if I recall correctly, that over 90 percent of the loans made by both [528] consolidating banks were in the category of $250,000 or less.

A. Yes, sir.

Q. And I believe you identified another chart which indicated that one of the competing banks had a similar type of ratio. Is that correct?

A. That's correct, sir.

Q. That indicates, does it not, that a vast proportion of the loans made by at least those three banks in Lexington are in the same dollar category?

A. Yes, sir.

Q. And that is where the great majority of the competition among those three banks was in the field of lending. Is that correct?

A. It would appear—yes.

Q. Mr. Miles, you testified earlier with respect to the fact that one of the banks in Lexington had no branches; and I think you indicated that you didn't think that was too significant. Is that correct?

A. I think I said I thought the figures of their growth would suggest that a branch was not a necessity to grow. That is what I had in mind.

Q. But your bank has acquired branches over the years, has it not?

A. Yes, sir.

[529] Q. I am certain that it wouldn't have done so if it didn't think it was good business. Is that correct?

A. Yes, sir, from a defensive standpoint.

Q. Mr. Miles, in connection with participating loans, isn't it much better, more advantageous, to a borrower to deal with only one bank rather than to deal with several?

A. There may be some advantages there, though he really doesn't care whether he gets all the money from me or whether we combine to get him the money. He would submit a financial statement to me. I would make a picture copy of it, send it to the city bank.

I would say, "Based on this, we are going as far as we can. Will you help?" They say, "Yes, we will."

He does have to sign his name twice—my note; their note. But two signatures instead of one is really the extent of his trouble.

Q. Isn't there a little lapse of time involved in getting the participating bank to go along with you?

A. No, sir; no, sir. They will usually have a great deal of confidence in the bank that asks them; and the fact that I say,

"We are going our limit" says to them "They have checked this thing out and they won't ask us to come in until they have done all they can."

[530] Q. What about from the viewpoint of the bank? Do you think it is more advantageous to be able to handle a large loan without passing part of it on to, say, your correspondent bank in Cincinnati or Louisville?

A. I would prefer it, yes, sir, from an operational benefit standpoint. I think there is no competitive factor involved. That bank that I asked to help is going to say in effect, "Now, you leave some more money on deposit with us," and that money on deposit with them is not helping us. We don't earn anything on it.

If I made it all, I don't have to put that extra there with them.

Q. So it is an advantage to handle the whole loan if you can?

A. Operational advantage, yes, sir.

Q. Would you say that a bank that is unable to handle the whole loan itself is at a disadvantage with a bank with which it is competing which is able to handle the whole loan?

A. I don't believe so. If the city correspondent has confidence in the local bank that originates it, really it is just about a matter of a telephone call. When you get up into the size that would require you to lay off an overline, another day isn't of much consequence to people.

Q. Of course the other bank would have to make a [531] correspondent deposit, would it not?

A. Yes, sir.

Q. So that you would have to put some money into another bank that could utilize that money for its benefit, wouldn't you?

A. That is why I emphasized the point that there is an operational benefit, but no competitive advantage.

Q. Mr. Miles, can you approximate as far as the average amount of deposits in the consolidated bank which come from governmental agencies such as the City, State, or any agencies supported by the State or under control of the State?

A. I believe there are some figures—I can't from memory. May I look at some figures?

Q. Surely.

A. Your question is, what percent of our total deposits are represented by state and political?

Q. Yes.

A. I have a little pocket slide rule here. Which date, sir?

Q. I am just interested in the approximate amount. You can use any date you choose, sir.

A. I won't have to use the slide rule. On a chart giving the year-end figures from Call Report in 1960, under the heading of "Demand Deposits of States and Political [532] Subdivisions," six percent of the First National's were in that category.

Q. Do you have the percentage of Security Trust's?

A. Yes, sir. They were 1.44 percent on the same date. That is demand deposits.

Q. Do the governmental agencies have other types of deposits with your bank?

A. Yes, sir. On the same date the First National had a time deposit from the United States Government of $100,000, which was seven-tenths of one percent; and it had deposits of states and political subdivisions, time deposits, of 9.55 percent.

Q. In terms of dollars, those deposits are substantial, are they not, sir?

A. Yes, sir, they are.

Q. Mr. Miles, you testified earlier about correspondent bank balances. If I understood your testimony correctly, one of the purposes in the merger was to better enable the combined institution to compete for deposits from correspondent banks. Is that correct?

A. That's correct.

Q. Do you know how many correspondent bank accounts you had—the combined bank—at the time of the consolidation?

A. I would say approximately 60.

[533] Q. How many have you obtained since then?

A. I don't know.

Q. Would two be about the correct number?

A. I don't know.

Q. Do you have any idea of the dollar volume of that increase in business?

A. I don't have the figures in my mind. I am not sure they are here. Right off I don't know the answer to that.

Q. Isn't it true, Mr. Miles, that a lot of those small banks that have correspondent balances in your bank also have correspondent balances in Cincinnati, Louisville, and other large cities just as your bank has with a similar type correspondent?

A. Yes, sir.

Q. Mr. Miles, would you tell us who initiated the participation of Mr. Porter in the early negotiations leading up to the consolidation?

A. I don't know.

Q. Mr. Porter didn't take it on himself, did he, to try to bring the banks together?

A. I don't know that. I was only the executive vice president at that time. I am sorry I can't answer your question. I just don't know.

Q. Mr. Miles, for the purpose of helping you to refresh [534] your recollection, do you have your deposition before you, sir?

A. Yes, sir.

Q. Would you turn to page 214, please.

A. Right.

Q. Would you look down at Question No. 854.

A. Right.

Q. At the top of page 214, read that, please, sir.

A. "Now the next letter which was submitted pursuant to paragraph 17 on rejection was a letter from Ira J. Porter to Mr. Courtney, Mr. Nichols, and Mr. Dabney, president of Security Trust Company. Now how does Mr. Ira Porter fit into a merger which is being contemplated here in Lexington?"

Are all these answers mine?

Q. Yes.

A. I started to say "And I said." "Mr. Porter used to live here in Lexington and he was with a bank here before he went with the Louisville Trust Company. I would say that these folks had a very high regard for him as an individual, as we later did for the Morgan Guaranty as an institution, and they felt it was better for a third interested but unbiased party to do the suggesting, and they asked Mr. Porter if he would undertake to do it."

Q. Does that refresh your recollection, Mr. Miles?

[535] A. No, sir, it doesn't. I just don't recall.

Q. You don't recall what you testified to previously, do you?

A. Mr. Turner had me so up in the air then—yes, sir.

Q. That was your recollection at the time you testified, was it not?

A. It must have been, sir.

Q. Mr. Miles, you testified earlier about the growth of the community of Lexington, did you not?

A. Yes, sir.

[536] Q. A large number of corporations established plants in Lexington prior to the merger, did they not?

A. Yes, sir.

Q. Isn't it also true that the banks in Lexington have all shown a substantial growth in the last five or ten years?

A. That is right.

Q. So, the banks of Lexington have grown with the development of the community, have they not?

A. That is right.

Mr. WILLIAMS. Your Honor, could we have a short recess?

The COURT. Yes. We will take a fifteen-minute recess.

(Whereupon, a fifteen-minute recess was taken.)

The COURT. You may proceed.

By Mr. WILLIAMS:

Q. Mr. Miles, now turning to the field of mortgages on real estate, is it not true that a bank is limited to 60 percent—on making loans on mortgages on real estate, isn't a bank limited to 60 percent of its time and saving deposits?

A. Yes, unless they have passed this new provision that they are trying to put it up to 70. I don't know [537] whether that has been passed or not.

Q. Isn't it true that in the case of your bank that about 75 percent of your deposits are demand deposits?

A. Approximately that, yes.

Q. So that limits the amount of money you have available to make loans on real estate, does it not?

A. Well, it means that we would have to be more liquid in some other category; we would have to have a larger amount of short-term governments to provide that liquidity, yes, sir.

Q. Would it be a correct statement to say that—I am speaking now of First National, the consolidation—that it tried to limit as far as possible its loans to five-year maturity, that is, on real estate?

A. For many years that was true. But there was a gradual shift, because we realized that while we thought we were making a five-year loan for liquidity, if the time came that we wanted to get out, everybody else would too. And it was a theoretical thing really.

Q. Would it be a correct statement to say that as far as First National was concerned, mortgage loans was a relatively small part of your total business?

A. Still several million. That is a pretty good sized amount of money to us.

[538] Q. The question was relative part, Mr. Miles.

A. It was not a major part.

Q. A relatively small part, was it not?

A. I don't think so. That is a matter of opinion.

Q. You don't think it was?

A. Not a relatively small part.

The COURT. Oh, well, there are the figures there.

Mr. WILLIAMS. Very well, your Honor.

By Mr. WILLIAMS:

Q. Mr. Miles, you testified earlier about the field of competition existing among banks in Lexington. I think you testified that it was primarily in the service field, did you not?

A. That is right.

Q. Are the banks in Lexington offering inducements of various kinds to individuals to open savings accounts with them?

A. Do you mean like premiums?

Q. For example, stamp albums?

A. Yes. And silverware.

Q. And your bank, in fact, does that, does it not?

A. Stamp albums, yes.

Q. So that you are sort of like a drug store in that sense, you offer inducements to get people to bring in their savings deposits to your bank?

[539] A. Yes, sir. That appeals to the kids. And we hope we will make long-term customers out of them.

Q. So that as far as Lexington is concerned, Mr. Porter's testimony about such things is not correct, is it?

I think his testimony was that there was no—that distinguishing banks from other institutions——

The COURT. It is hardly fair to ask one man to say whether another man has told the truth or not. He can state what he wants. The record shows whether he contradicts him or not.

The WITNESS. I believe there is some provision that says within limits we can do that. But we can't go very far in it. No trips to Bermuda, like I think he meant.

By Mr. WILLIAMS:

Q. But you do engage in this type of activity as a promotional device to bring customers into the bank?

A. That is right.

Q. Now, Mr. Miles, you have familiarized yourself with the application that the consolidating banks filed with the Comptroller, have you not?

A. Yes.

Q. Doesn't that application call for information with respect to the nature of competition among banks and with respect to service charges and rates on loans?

[540] A. That is right.

Q. So that at least the Comptroller of the Currency is interested in passing on the consolidation of the competition among banks in rates for services and interest rates on loans?

A. I am sure he had his reason for putting that in.

Q. I would like to show you at this time, Mr. Miles, the Government's Exhibit Number 129, which is the application to merge in this case, and ask you to turn to Exhibit "G", if you will, please, sir.

The COURT. Is that the Government's Exhibit?

Mr. WILLIAMS. Yes, sir, your Honor.

I am sorry, your Honor. It is 129. I am not certain I said that.

The COURT. Yes.

Mr. WILLIAMS. And Exhibit "G".

The exhibits are indicated at the bottom of the page.

The COURT. All right. I have it.

By Mr. WILLIAMS:

Q. Do you have that exhibit, Mr. Miles?

A. Yes, sir.

Q. That indicates, does it not, Mr. Miles, that in commercial loans, unsecured, First National at the time [541] of the proposal charged 5 percent; Security 5½ percent? Is that correct?

A. Yes, sir.

Q. And prime customers, First National had an interest rate of 5½ to 6, and Security had 6.

Mr. ODEAR. You have got your lines crossed there, Mr. Williams. You are down a line.

Mr. LISLE. The prime customers got lower rates.

Mr. WILLIAMS. I am sorry.

By Mr. WILLIAMS:

Q. Maybe it would be simpler, Mr. Miles, if you would just read the difference in rates charged as reflected by Exhibit "G" to the application.

A. Did you want me to read everything in that?

Q. Yes.

A. All right, sir.

In the category of commercial loans, unsecured, prime customers had a 5 percent rate at First National, 5½ percent at Security.

It was proposed that the First Security have a 5 percent rate there.

Others were 5½ to 6 at the First; 6 at Security; and we take both of them in and it would be 5½ to 6.

Q. You need not read the last column.

[542] A. All right, sir.

Collateral loans, depending on the collateral, 5 to 6 at First; Security 5½ to 6.

Mortgage loans for construction, 6 and 6.

General residential, 6 and 6.

Preferred customers, 5¾ and 5½.

By Mr. WILLIAMS:

Q. That is sufficient.

Looking further down the page, there is an item "Checking

Accounts, Service Charges." Would you read that paragraph, please?

A. "Five of the Lexington banks, including First and Security, charge service charges on checking accounts which are competitive and similar. Charges range from $1.00 maintenance cost for balances below $100, with five free checks, to no maintenance cost for accounts with balances in excess of $300, with credits for each $100 additional balance in the way of free checks. All the five banks' service charges are, in our opinion, reasonable, and there is little deviation in charges between the five banks because of the intense competition for accounts. The sixth bank, Central, also the smallest, usually does not charge any service charges to its checking account customers. The resulting bank would, of course, continue to charge in [543] the same manner that the two applying banks are presently, since competition will continue to be active among the banks for checking account business."

Q. Would you read the next paragraph, please?

A. "Inasmuch as competition is intense in all areas, both participating banks have maintained rates and charges in keeping with other banks and other financial institutions."

Q. That is sufficient, Mr. Miles.

That indicates, does it not, that there is competition among banks in Lexington, or at least there was between First National and Security in the field of rates, since there is variation in those rates?

A. Well, to some minor degree, yes.

Q. Well, it speaks for itself.

Now Mr. Miles, is it correct to say that there is competition in the field of advertising among banks?

A. Did you say is it correct to say that there is?

Q. Yes, sir.

A. I don't know how there is competition for advertising.

Q. All the banks in Lexington advertise in the newspapers, radio, and television, do they not, to secure business?

[544] A. A number of them do, yes, sir. I don't know whether it is competition between our advertising and somebody else's advertising. But we are all trying to get the same job done.

Q. I see.

Do any of the officials of the consolidated institution or members of the Board of Directors or advisory members of the Board of Directors have any interest in the local television or radio stations?

A. Yes, sir.

Q. Would you identify the individuals and the stations?

A. Mr. Douglas Gay, Channel 18, WLEX–TV.

Q. What is his connection, if you know?

A. With the station?

Q. Yes.

A. He owns stock in it. I don't know how much.

Q. What position does he have with the Bank?

A. He is an advisory director.

Q. Any other officials or Directors that have connection with the radio or television stations in Lexington?

A. I don't recall any, Mr. Williams.

Q. You just recall one man?

A. Yes, sir, right at the moment, yes, sir. Would you refresh my recollection?

[545] Mr. WILLIAMS. I think those are all the questions I have at this time, Mr. Miles.

Redirect examination by Mr. ODEAR:

Q. I believe you said in response to his question on cross-examination that the banks in Lexington had grown in recent years and that the community had also grown industrially in recent years?

A. Yes, sir.

Q. Would you say that the community—would you say that the banks had grown proportionately with the industrial growth of the community in Lexington?

A. No, sir.

Q. I call your attention to Exhibit Number 73, Defendant's Exhibit Number 73, and I ask you if that indicates anything as to whether or not the growth of banks in Lexington has kept up with the commercial and industrial growth of the community?

A. It indicates that the bank growth has not kept up with the industrial growth.

Q. Would you say that it shows there is a substantial lag or not?

A. A very substantial lag.

Mr. ODEAR. That is all.

[546] The COURT. Any further questions?

Mr. WILLIAMS. I would like to ask one or two questions, your Honor, if I may.

The COURT. Go ahead.

Recross-examination by Mr. WILLIAMS:

Q. What is the basis for your statement that the banks haven't kept up with the industrial growth?

A. May I refer to Exhibit Number 73?

Q. Yes.

A. Which indicates that in 1954 to 1958 when we were trying to grow industrially here with the Lexington Industrial Foundation, and so on, total deposits in Lexington banks went up a little over 26 percent. Their loans went up 38 percent, showing a need. Their total assets up only 25 percent.

Now, in the commercial growth down, first, in the selected services which normally accompany manufacturing growth, we had a 39 percent increase in the number of establishments, a 53 percent increase in total payroll, a 53 percent increase in total sales.

Now, the real crux of the thing is down in manufacturing, where we had total payroll up 171 percent; add value added by manufacture, up 203 percent; capital [547] expenditures up 578 percent.

Q. Mr. Miles, isn't it true that the capital expenditures made in manufacturing to a large extent in Lexington were made by nationwide companies setting up plants in the area?

A. That is right.

Q. I believe you skipped over retail trade.

That shows an increase of 4.40 percent, does it not?

A. That is correct.

Q. In wholesale trade, increase in number of establishments of 9.66 percent?

A. That is correct. I left them out because I was referring to the manufacturing and industrial growth.

Mr. WILLIAMS. Those are all the questions I have, your Honor.

Mr. ODEAR. That is all from this witness, your Honor.

The COURT. You may be excused.

(Witness excused.)

The COURT. Gentlemen, we will be in recess until in the morning at 10:00 o'clock.

(Whereupon, at 3:45 o'clock p.m., the Court recessed until 10:00 a.m., Friday, February 23, 1962.)

[549] In the United States District Court, Eastern District of Kentucky, at Lexington

Transcript of Testimony and Proceedings—February 23, 1962

PROCEEDINGS

[550] The COURT. You may proceed, gentlemen.

COLLOQUY RE EXHIBITS

Mr. HARVILLE. If your Honor please, before we commence with the witness, we found an error in pages 3 and 4 of our stipulation.

We would like to substitute pages 3 and 4 of our stipulation with a corrected page for each of those.

The COURT. Is it agreed?

Mr. WILLIAMS. Yes, your Honor.

The COURT. If it is agreed, all right.

Mr. HARVILLE. In our stipulation was listed an exhibit, and it was not actually in the stipulation. It is the one showing qualifications without bond. We would like to introduce that and mark it No. 94, which would be the next exhibit number, if your Honor please.

The COURT. That exhibit was filed with the stipulation?

Mr. HARVILLE. It was not actually filed, but it was listed in there and it was omitted by mistake.

Mr. ODEAR. I am not sure about that number, now.

The CLERK. That is correct. 94 is the next number.

Mr. ODEAR. Excuse me.

Mr. HARVILLE. Further, our Exhibit No. 83 was a written extract from the FDIC report, and we had listed on there some tables that we wanted to introduce from the FDIC [551] report itself. These tables were not actually included. I would like to introduce those, if I may, and mark them 83–A, B, C, and so forth. The Government has been furnished copies of those.

The COURT. All right, I assume that that is agreeable.

The CLERK. Changes in the numbers: "Banks and Banking Offices" will be 83–A.

The table denominated "Number of Banks and Branches," No. 16, will be 83–B.

The table denominated, "Population Per Bank, Etc.," No. 20, will be 83–C.

The table denominated, "Number of Operating Offices, Etc.," with the numerical number 25, will be 83–D.

The table denominated, "Relative Importance of the Largest Commercial Banks, Etc.," with the numerical No. 26, will be 83–E.

The table denominated, "Capital Account Ratios of Banks, Etc.," with the numerical number 33, will be 83–F.

Mr. MITCHELL. Would you repeat that one, please?

The CLERK. Denominated, "Capital Account Ratios of Banks and Deposits, Etc.," with the numerical number 33 over in the right-hand corner will be 83–F.

The table denominated, "Banks and Banking Offices [552] and Population Per Bank, Etc.," with the numerical number 35 in the upper right-hand corner, will be 83–G.

The table denominated, "Commercial Banking Offices and Percentages of Deposits in the Largest Banks, Etc.," with the numerical number 40, will be 83–H.

(The above-mentioned documents were filed with the Clerk and marked Defendant's Exhibits Nos. 83–A through 83–G, inclusive.)

(The above-mentioned document which was listed in the stipulation was filed with the Clerk and marked Defendant's Exhibit No. 94.)

(Corrected pages 3 and 4 of stipulation substituted and filed with the Clerk.)

Mr. HARVILLE. If your Honor please, one more thing. As to Government Exhibit No. 62, we have agreed upon a change in that; and we would like to substitute, if we may, a corrected No. 62 for the Government.

The COURT. You may. I notice you bowing your heads. That means you are agreeing to it?

[553] Mr. WILLIAMS. Yes, sir, it does.

The CLERK. Plaintiff's Exhibit No. 62 as substituted.

(A substituted Plaintiff's Exhibit No. 62 was filed with the Clerk.)

Mr. HARVILLE. Finally, a stipulation as to the factual data concerning the correspondent bank balances of banks located in this general area, in Louisville and Cincinnati, which the Government has agreed to. We would like to offer this in evidence, your Honor.

The COURT. Is that by agreement of the Government?

Mr. WILLIAMS. That is correct, sir.

The CLERK. Is that to be an exhibit?

Mr. HARVILLE. Yes.

The CLERK. Exhibit No. 95 for the Defendants.

(The above-mentioned stipulation was filed with the Clerk and marked Defendant's Exhibit No. 95.)

Mr. HARVILLE. If the Court please, may we read the Exhibit No. 95 which we have just introduced to the Court?

The COURT. Yes.

Mr. HARVILLE. "It is stipulated that, as of December 31, 1961, the four largest banks in Louisville, Kentucky, and the three largest banks in Cincinnati, Ohio, held correspondent bank deposits in the aggregate sum of $133,207,756.83 from banks which are listed on the attached [554] four pages and which are located in the same geographical area that First National Bank and Trust Company of Lexington held correspondent bank deposits from as of December 31, 1960.

"As of December 31, 1960, First National Bank and Trust Company of Lexington held correspondent bank deposits from 58 of the banks shown on the attached list; and as of December 31, 1961, First Security National Bank and Trust Company had correspondent bank deposits from 60 of these banks.

"The foregoing total of $133,207,756.83 includes correspondent bank deposits from banks located in Fayette County, Kentucky. It is also stipulated that many of the banks listed on the attached four pages maintained correspondent bank deposits in banks located in both Louisville and in Cincinnati, and in some instances in more than one bank in Louisville or in Cincinnati; but the exact extent of such is unknown for each."

It is signed. I will not read those banks. There are too many.

Mr. LISLE. For the record, to clear up any question, could the record show that the exhibits that are referred to in the revised stipulation have been offered in evidence, and also the Request for Admissions. We would like to offer that in evidence—the Request for Admissions and the Government's answers thereto.

[555] Mr. ODEAR. I would like to call Mr. William Miller.

Whereupon, WILLIAM MILLER was called as a witness, and, after being first duly sworn, was examined and testified as follows:

The CLERK. The witness, your Honor, is Mr. William Miller.

Direct examination by Mr. ODEAR:

Q. Mr. Miller, where do you live?

A. In Louisville.

Q. Are you connected with a bank in Louisville?

A. I am a vice president of the Citizens Fidelity Bank and Trust Company.

Q. How long have you been connected with that bank?

A. Approximately thirty-five years.

Q. Mr. Miller, does that bank maintain a Correspondent Bank Department?

A. It does.

Q. Do you have any connection with that department?

A. I have been connected with that department——

The COURT. Mr. Miller, look this way so I can be certain to hear what you say, and they will hear you on [556] each side.

The WITNESS. Yes, sir. I have been connected with the Citizens Fidelity Bank from the time that I went with the institution.

By Mr. Osman:

Q. I believe you said that they did maintain a Correspondent Bank Department. Have you been connected with that?

A. Yes, sir.

Q. And for how long?

A. I have been with the bank for approximately thirty-five years, and I have been with that department all the time.

Q. What is your connection with that department?

A. I went in as an assistant to one of the officers; later was made assistant cashier, vice president, and now first vice president.

Q. Particularly with the Correspondent Bank Department, what has been your activity with that department of the bank?

A. I have been in charge of that department for the last twenty years.

Q. Mr. Miller, with what success has your bank met in building up its correspondent bank business?

A. Well, if I understand your question correctly—[557] this is certainly no credit to me—but when I first went with the bank, as far as we would go in serving Kentucky, it was here in Lexington. But now we have expanded until we are covering the entire state.

I recall when our bank deposits were around $20 million. Now they are in the neighborhood of $100,000,000. We try to serve the banks in what we term throughout Louisville's trade territory.

Q. Where does your bank rank nationally with the other banks in the United States on the basis of the percentage of your correspondent bank balances or deposits from correspondent banks with your total deposits?

A. According to Finance, which is a bank magazine of all banks, the first 100 largest banks that furnish them with these Call Reports, we are in third position percentage-wise. But we are in about twenty-fifth position total deposits—that is, of banks, correspondent bank deposits.

Q. Percentage-wise you are third in the United States in that comparison?

A. That's right, percentage-wise.

Q. By reason of your long activity in the field of corre-

spondent banking, and particularly correspondent banking in Kentucky, are you familiar with the needs and the activities and the services which banks render to each other in that [558] field?

A. Well, I feel that I am, yes, sir.

Q. Would you explain to the Court and for the record what services a city bank such as yours offers to a small country bank in the correspondent banking field?

A. Well, if I must go into all of that phase of the services we render, it would take you a long time. I think what you want to know primarily is the assistance that we actually render to the banks.

Q. What do you do for the correspondent country banks? What does your bank do for them?

A. We not only clear their items—meaning, that is, their checks that they in turn deposit with us and draw them on other banks—but we in turn lend these banks money when they need it; and then we in turn assist them in financing firms, individuals, and corporations in their immediate localities where their capital is not large enough to take care of their needs.

Q. Those, you feel, are the two principal fields in which your city bank is of service to the small country banks?

A. As I have stated, we could just name many things. We look after helping them with their investments. Primarily, however, I would say as far as our bank is concerned, we help them to take care of their excess lines where their own [559] depositors need money and their capital structure is not such that they can take care of them.

Q. Let's look very briefly now, if we may, at those two major fields of service which you render next. The first one, I believe you said, was in clearing of their checks and matters of that kind.

Will you explain just very briefly how that works?

A. Banks in Winchester have their own depositors go in and make deposits and they have checks drawn on Lexington or Louisville, on Paris—all the banks over the state. They will send that stuff in to us because we are their correspondent,

and we in turn will send it right out and collect them for them on these different banks.

We help these banks with other assistance. For example, our tobacco crop in Kentucky is one of the biggest moneyed crops that we have. There are so many of these smaller banks out here in the state that have a capital structure that isn't large enough to take care of the money that these tobacco warehouses have to have in order to operate these warehouses.

The capital structure of these banks where we have these tobacco warehouses is such that they have to come to us to get help because these warehouses have to pay the farmer the day the tobacco is sold. They do not get their money for some week or ten days, and they have to have the money [560] to pay these farmers. Therefore they come and borow the money from us because we are their correspondent.

That is directed at tobacco warehouses, but it flows to us through these correspondent banks.

Q. Is that true not only of the tobacco industry but in other loans that arise from time to time in country banks?

A. That's very true.

[561] Q. Now, on the other hand, Mr. Miller, what does the country bank do for your bank in return for those services which you render to them?

A. Well, of course, he keeps compensating balances with us and it enables us to have funds loanable, and to invest in securities. Of course, they would render us the same service that we render them, but not from a loan standpoint.

They do collect these items on their own banks that we will send to them.

We gather information from each other. We work as a team, you might say.

Q. And is one of the principal benefits the fact that each correspondent bank keeps on deposit with your bank a substantial sum of money which is in general deposit and which is available for loans and other banking purposes by your bank?

A. Yes, sir, that is very true.

Q. Mr. Miller, over what area of Kentucky does your so-called correspondent bank business come?

A. Well, we have correspondent bank business throughout the entire State of Kentucky.

That is true with eastern Kentucky, here in central Kentucky, southern and western Kentucky. We extend down [562] into Tennessee. We extend over into southern Indiana. We have some twenty to twenty-five banks in southern Illinois.

Q. Tell the Court whether or not you do a substantial correspondent bank business with country banks in central Kentucky and eastern Kentucky and in the area close to where the First Security National Bank is located?

A. Yes. We have considerable business through central Kentucky and also through eastern Kentucky and through this immediate territory.

Q. Mr. Miller, is it necessary for the so-called city bank in this correspondent bank relationship to be located in a town where a branch of the Federal Reserve Bank is located?

A. No, sir.

Q. Is it any great advantage for it to be located in such a city?

A. I can't see that it is.

For illustration, let's take the City of Indianapolis, Indiana. It is a larger city than Louisville. They have one bank in particular—perhaps two—that is really larger than my bank. They have a large correspondent bank department. However, there isn't a Federal Reserve [563] Bank or branch in the State of Indiana.

That same thing is true—well, of course, it would apply to Evansville, Indiana. They have quite a good deal of correspondent bank business. I would say Evansville is comparable to Lexington. They have a great deal of correspondent bank business in Evansville.

By the same token, Chattanooga, Tennessee has a large correspondent bank business. They do not have a Federal Reserve Bank. Nor do they have a branch. That, of course, is true with Knoxville, Tennessee. Knoxville is certainly comparable to Lexington. They do a good deal of correspondent bank business. They have no Federal Reserve Bank.

Q. Mr. Miller, is Lexington geographically located so as to be able to furnish successfully these correspondent banking

services with country banks in central and eastern Kentucky?

A. Well, I will have to answer yes. It is perfect if they get out here and get to going with this country bank business. I hope they don't take it all from me.

But to answer your question, yes.

Q. Mr. Miller, do you know of any reason why the First Security National Bank and Trust Company of Lexington cannot successfully build up a substantial [564] correspondent bank business in central and eastern Kentucky?

A. No, I do not. As a matter of fact, if I had a axe to grind, and if I wanted to be selfish about this matter, and if I wanted to take a stand of thinking of this correspondent bank business and thinking of myself personally and my own bank, I would be inclined to be against this.

Q. Why would you be inclined to be against it?

A. Well, because it is going to give me more competition. You are going to have a larger capital structure which I think the bank here in Lexington needs to have.

And it is going to enable this bank to bring more business into Lexington. There isn't any question about that. It is going to be more of a competitive standpoint from me looking at it from my own standpoint. As I said, if I wanted to be selfish about the matter, I would be opposed to it. But I don't think you can stop progress.

Q. Mr. Miller, in your opinion, and based upon your experience that you have described, and based upon your knowledge of this type of business and this type area, tell the Court whether or not in your opinion the merged bank of First Security National Bank and Trust Company is or is not in a better position to compete for this [565] type business and render this service than the old First National would have been?

A. Yes, sir. They are going to be, because they have got—because they will have a larger capital structure which will mean that they will have a talking point to these banks to induce them to do more business here in Lexington. And by so doing, now—pardon me, please, but by bringing this business into Lexington, it is going to mean more business for these other banks here in town.

We have other correspondents in the City of Lexington besides the First National. I think this merger is going—if it is granted, it will bring more business into Lexington.

I think it will give these other banks here in town a better opportunity to get their share of it. Now, First National may be large, as we are in Louisville, and frankly the other banks in the City of Louisville are constantly pecking at us. It is a little embarrassing, but my bank deposits are extremely large compared to our total deposits in our bank. I don't say it is of any great mind at all; but the other banks are constantly pecking at me to get that business away from me. That is just perfectly natural.

By that same token, if this bank here in Lexington [566] brings this business into Lexington from these other banks, I think the other banks here in Lexington have an opportunity to get their share of it. I would if I was in the other banks.

Q. That in a way has anticipated my next question. But I am going to ask you this: if the First Security National Bank and Trust Company is successful in increasing its deposits through the development of a correspondent bank business, will that, in your opinion, adversely affect the position of the other banks in Lexington?

A. No. I have really answered that question, I think, by saying that it is true it is going to—I certainly think it would be true that it would have a tendency to bring more business into Lexington. But by that same token, when you get more money in here, I would think that the other banks in Lexington are going to have the same chance of getting that business as you have to keep it.

In other words, to make that point: if there is a bank in eastern Kentucky, for example, and on account of the dividing line of the Federal Reserve Bank—if there is a bank in eastern Kentucky that doesn't do business with us, I am perfectly sincere with you in saying that I would—and I can't get it—I can't get it—I would love very much to see that business come to some other bank in [567] Louisville, because I want to see these banks become Louisville-minded and Kentucky-minded, and I would like to see us get away from Cincinnati

and Ohio. When it gets to Louisville, I am going to get my share of it.

Q. Mr. Miller, prior to this merger, where did your principal competition come from for this correspondent bank business arising in central and eastern Kentucky?

A. You mean——

Q. What institutions offered you the most competition for that?

A. You mean in the State?

Q. Yes, in the State of Kentucky?

A. Oh, well, I would say the First National Bank of Louisville.

Is that what you mean?

Q. Yes.

What about Cincinnati, are you getting a substantial amount of competition for the country business from Cincinnati?

A. Yes. Cincinnati gives us a lot of competition. Especially through eastern Kentucky. For some unknown reason, Cincinnati has an idea that eastern Kentucky belongs to them. I don't think so. I think it belongs to Kentucky.

Q. Tell the Court whether or not in your opinion, [568] based on the experience that you have described in this field, as to whether or not since this merger the First Security National Bank and Trust Company will be in a position to offer you more competition in this particular field than has been offered in the past out of any Lexington bank?

A. I think I have answered that question. I would say yes they are going to offer me more competition, because they are going to have a talking point.

They are going to have a larger capital structure. They are going to be able to do more for these banks in helping them and assisting them with their—assisting them with taking care of their loans that are in excess of what they can lend them. But that doesn't mean that we are going to stop going out here and trying to get business and keep what business we have got.

Q. Yes. I believe the First Security National Bank and Trust Company is a correspondent of your bank, is it not?

A. Yes, sir We are very happy with it.

Q. And other banks in Lexington are also correspondents with your bank?

A. Yes, sir. We have other connections here in Lexington.

[569] Q. Now, it has been testified in this case that one bank which is a correspondent of another bank will not compete with that bank for business. Is that true in the correspondent bank field?

I mean by that will a bank such as First Security, which is a correspondent of your bank in Louisville—will those two banks compete against each other for the correspondent bank business in Mercer County, in Perry County, and the other counties out in Kentucky?

A. Certainly we are.

Q. You are?

A. Sure, we are. There is no question about that.

I will say this: our bank, namely, the Citizens Fidelity Bank, is not going to come up here and go to this law firm or that groceryman or this doctor and solicit his business, but if we can be introduced to someone that is interested in talking to us about an estate, why, of course, some of our trust officers would be happy to talk to him. But because of the First National Bank having accounts from these banks in the immediate vicinity of Lexington, that doesn't mean that we are going to close up shop and go home. We are going to call on them a little bit stronger and try to keep what we have got and get more.

Mr. ODEAR. You may ask.

[570] Cross-examination by Mr. SPAETH:

Q. Mr. Miller, you testified that you have accounts from banks in Lexington?

A. Yes, sir.

Q. Do you have an account from the First Security Bank?

A. We have an account from the First National Bank and an account from the Security Trust Company, yes, sir.

Q. And you now have one from the First Security Bank?

A. That is right.

Q. What is the approximate size of that account?

A. Dollarwise?

Q. Yes.

A. Do you mean what their deposit is with us?

[571] Q. Yes.

A. It will average a million dollars.

Q. Does that deposit fluctuate pretty widely over a given period of time?

A. Yes, sir, because as I have stated, naturally we have tobacco as our principal money crop in Kentucky. When we market our tobacco in December and January, naturally we will have more money and consequently they will keep more money with us. That is true with our other correspondent banks.

Q. What would you say the high point of the deposit is from First Security?

A. Say a million and a half dollars.

Q. $7.5 million?

A. No; perhaps a million and a half dollars. I don't know right offhand. It is up and down, of course.

Q. Mr. Miller, I believe you testified that one of the services you render to banks located outside of Louisville is the clearance of checks. Is that a major reason or a very important reason why correspondent banks keep correspondent bank balances with you?

A. I wouldn't say that is the principal reason. That is one of the reasons, yes, of course. But let me state right there: We use the Federal Reserve Bank very little in that [572] respect. We ourselves are direct senders. We have a transit department that, when we get those items in, we send them out right direct to the paying bank. We use the Federal Reserve Bank but very, very little. I expect we use the Federal Reserve Bank less than any correspondent bank in the City of Louisville. I can't make that statement.

Q. You yourself through your own transit department are able to effect these check clearances?

A. Yes, sir, and we can clear them so much quicker.

Q. Quicker than who?

A. Than the Federal Reserve Bank.

Q. Quicker than other banks in Louisville?

A. We use that as a talking point.

Q. Is it true?

A. I think it is.

Q. Can you effect those clearances quicker than banks in Lexington?

A. Unless their business picks up and they have a transit department like we ourselves have, they are going to have to do something like that. I think they can do it. I am not asking for a job, but I think they can work it up.

Q. Just what kind of personnel and facilities are involved in this transit department of which you speak?

A. Of course we have pretty trained, well-trained [573] people. We have a transit department that consists of some sixty to seventy people that do nothing in the world but handle these items coming in and going out. They are nothing in the world but clerks.

Q. It is a large undertaking to have an efficient transit department?

A. That is like any other business: If you get it, you have got to take care of it.

Q. You also testified, I believe, that you helped your correspondent bank with their investment problems?

A. That's right.

Q. Could you give us a little bit more detail on that? Just what do you do for them?

A. We do not recommend to them to buy any certain kind of bonds. The thing that we cater to primarily is our own Kentucky bonds, revenue bonds, and Government bonds.

Q. United States Treasury Bonds?

A. Yes, sir. Well, that is Government bonds, Treasury.

Q. You have specialized personnel handling those transactions?

A. Well, yes, sir; we have officers in our Government Bond Department who of course make a study—for example, this last issue of Governments that came out; we didn't think it was exactly the right issue for our correspondent banks [574] to make the exchange. It was too long a maturity. We didn't tell the banks what to do, but we gave them our advice.

Q. You have a Government Bond Department?

A. Yes, sir.

Q. How many people are in that department?

A. I would say eight to ten—meaning clerks.

Q. Do you know whether First Security has a Government Bond Department?

A. That I don't know. I don't know whether they have one or not. They have brokers right here in the city, I am sure. I know they have that. I think Healey and Sons have a branch in your city. That is a very reliable brokerage firm in Kentucky—Olmstead Brothers.

Q. That is not part of the bank, is it?

A. No. I mean you can buy and sell. Bear in mind, all banks don't buy and sell their Governments through us. I wish they did. But we have that service available for them if they want it.

Q. Does First Security buy their Governments through you?

A. Sometimes; not too often.

Q. How about the other correspondent banks in Central and Eastern Kentucky?

A. A lot of them do. They are smaller and they look [575] to us to help them out. After all, the First National Bank is a pretty good sized bank. I would hazard a guess they are called several times a day by perhaps New York bankers or something like that about their Government bond portfolios. We are.

Q. How big is your bank? Can you give us an idea of its capitalization, deposits?

A. We are a six million dollar capital.

Q. Pardon me?

A. We are a six million dollar capital. Is that what you mean? $19 million surplus. Our deposits will fluctuate. Right now I would say we have around $250 million on deposit.

Q. I believe you testified that you had approximately $100 million in correspondent bank deposits. Is that correct, sir?

A. It will run that. That isn't true today. But on December 31 we showed a little over that. The reason for that is this, that that is when we have a huge surplus of money occasioned by the sale of tobacco.

These banks out in the state that do business with us choose to show a pretty good cash reserve, and they have a rather large deposit with us. As a matter of fact, it is a published

statement. Our bank deposits over the year-[576]end were $123 million. Today they are less than that because these banks are investing their money.

Q. Do you have any idea of the size of the correspondent bank balances held by First Security?

A. Of course I would have to guess at that. I have no reason of knowing.

The COURT. State approximately what it is over-all.

The WITNESS. I would say, Judge, $15 million, more or less. I wouldn't know.

By Mr. SPAETH:

Q. Do you know approximately, Mr. Miller, how many of your correspondent bank accounts come from Kentucky?

A. Yes, sir. We have correspondent bank business in 95 percent of the banks in the State of Kentucky outside our competitors. We don't have an account from banks—well, we do have an account with the Bank of Louisville.

Q. Mr. Miller, how do the banks in Lexington, if you know, change the amount that they have on deposit with the Federal Reserve Bank in Cincinnati? I take it that rather frequently they have to put money in or perhaps take money out of that reserve account.

A. Any member bank—and this goes for Lexington or any other bank—any member bank has to keep a certain [577] percentage of their deposits with the Federal Reserve Bank. We have this to happen—that banks out in the state, small national banks, have a reserve, since we are in this district, with the Federal Reserve Bank in Cincinnati.

Yet the fact remains they are borrowing from us. It doesn't make sense, but that is true.

The COURT. What was your question? Your question was how do they reduce their deposits with the Federal Reserve Bank.

Mr. SPAETH. Or increase them, your Honor.

The COURT. Is that what you want to ask him?

Mr. SPAETH. Yes.

The COURT. Answer him, Mr. Miller.

By Mr. SPAETH:

Q. How do they effect the transfer of funds, is what I am after.

A. They will check either on us—if that is what you mean—or check on another correspondent. Or they will send the Federal Reserve Bank a draft on us to build up their reserve.

The COURT. Don't you think we are wasting time taking up such matters as that? There is just one way to do it. If you want to deposit more money and increase there, you will draw on some account where you have it; and if you want to take [578] it away, you will draw on an account in the bank.

Mr. SPAETH. Yes, your Honor.

The COURT. I think it is a waste of time.

By Mr. SPAETH:

Q. What I was getting after, Mr. Miller: To the extent that they do this through your bank, isn't it important to have a correspondent bank in a city which has a Federal Reserve Branch in it?

A. Not at all, no, sir. The Judge has just answered it.

The COURT. Now you have answered it. Let's go on.

The WITNESS. In other words, if they want to increase their reserve in Cincinnati, they could draw a check on us and we are not in the Cincinnati Federal Reserve District.

Mr. SPAETH. May I consult, your Honor?

The COURT. Oh, yes.

By Mr. SPAETH:

Q. Mr. Miller, I believe you testified that in your opinion the consolidated bank with its larger capital structure would be in a better position to compete for correspondent bank business than the banks were prior to their consolidation. Is that correct?

A. Yes, sir.

Q. So that size is an important factor in competition [579] in banking.

A. I would say that it would be in one sense of the word because they are going to look to this capital structure. After all is said and done, regardless of the size of the banks, they are only insured up to $10,000. They like to think, just like a national treasurer, he likes to think of the money that you have

invested in your own capital. I would think it would be some factor.

It isn't altogether on that. It is a lot of personality.

Mr. SPAETH. I have no further questions, your Honor.

Mr. ODEAR. That is all. Thank you very much, Mr. Miller.

The COURT. You may be excused, Mr. Miller.

(Witness was excused.)

Mr. ODEAR. Mr. Leonard Smith.

Whereupon, LEONARD SMITH was called as a witness and, after being first duly sworn, was examined and testified as follows:

The CLERK. The witness, your Honor, is Leonard Smith.

Direct examination by Mr. ODEAR:

Q. Mr. Smith, where do you live?

[580] A. I live in the country out from Lexington.

Q. Are you connected with a bank in Lexington?

A. Yes, I am vice president of the First Security.

Q. Prior to the merger what bank were you with?

A. The First National.

Q. How long have you been with the First National Bank?

A. About eight years.

Q. Tell us briefly what your banking experience and other experience has been prior to coming with the First National Bank approximately nine years ago.

A. I was for eleven years an officer of the Farmers Bank and Trust Company, Georgetown. For eight years, Deputy Banking Commissioner, and Banking Commissioner, of Kentucky. For seven years, vice president in charge of the Correspondent Bank Department of the Liberty National Bank and Trust Company in Louisville. And for four years, Chancellor of Georgetown College. And then I came here.

Q. When you were with the State as Deputy Commissioner and subsequently as Banking Commissioner, tell the Court generally what you did with reference to banks and what your duties were in that connection.

A. We had a force of examiners who examined the state chartered banks; and if they were members of the Federal Reserve System we joined with the Federal Reserve examiners.

[581] If they were members of the FDIC, we joined with

them. Occasionally there would be a trust department that was affiliated with a national bank, and in those cases we joined with the national bank examiners in examining those.

After we found the condition of the banks, we then would work with the banks in correcting any unsatisfactory conditions. Also we had the responsibility for deciding upon the approval of consolidations, the approval of charter of new banks, and for establishment of branches, and so forth.

Q. Mr. Smith, what have your duties been generally since you went with the First National Bank at Lexington?

A. I have had charge of their Public Relations Department, which includes business development and anything to do with the promotion of business and industry in Lexington; and also of course to solicit the bank accounts for our bank.

Then I have been in charge of the correspondent business we have had.

Q. That was one of the main things I wanted to ask you about. You have been in charge of First National's correspondent bank business?

A. That's correct.

Q. Mr. Smith, based on this experience that you have described, will you tell us why smaller banks maintain [582] correspondent bank accounts with larger city banks?

A. They need those accounts to carry their reserve if they are not a member of the Federal Reserve System. They need those accounts to clear the items in the particular community. They need those accounts especially if there is a considerable trade and traffic between the community of the smaller bank and the city bank.

Q. In your opinion what factors influence small country banks in the choices that they make of their larger city correspondent bank?

A. I think the convenience and the economic similarity and economic traffic between the two is perhaps the first factor involved in the selection of a correspondent bank. The next factor involved, I think, is the general reputation of the bank; and then of course its statement of condition revealing its capital ratio to its total deposits. And then I think the personalities of the officers of the smaller bank and the officers of the

larger bank, especially the man in charge of the correspondent department, weighs very heavily in the selection of a correspondent account.

Q. Mr. Smith, in your opinion does the fact that the larger city bank is or is not located in the city where there is a branch of the Federal Reserve Bank preclude a small country bank from choosing that bank as its correspondent?

[583] A. No, sir.

Q. Does it affect the choice of the small country bank in selecting a correspondent?

A. No, sir, it does not. I would like to expand on that just one statement,

Q. I was going to ask you why. Will you tell us why?

A. For this reason: If the smaller bank has cash items, or checks as we call them, drawn on that immediate vicinity, they will send them to that bank regardless of whether they carry an account with that bank.

As I stated earlier, the convenience of the location of the bank and the economic ties between the two communities are the factor there. The city bank does not have to have a Federal Reserve Branch in its community to attract that type of business.

Q. In your opinion is the First Security National Bank of Lexington geographically and otherwise located so as to be able to attract the correspondent bank business in Central and Eastern Kentucky?

A. I think it is in a perfect condition for it.

Q. Mr. Smith, do non-member banks—and I mean by that banks who are not members of the Federal Reserve System in the State of Kentucky—have to of necessity maintain reserves in other banks somewhere?

[584] A. Yes, they do. If they are non-members, they must maintain a reserve of 7 percent of their demand deposits and 3 percent of their time deposits. That of course would include the cash in their till. So the remainder of it must be kept in a larger city bank.

Q. Are such non-member, small country banks, required to maintain reserves in the Federal Reserve Bank?

A. No, sir.

Q. Do you know how many non-member state banks there are in the State of Kentucky approximately?

A. The total banks in Kentucky are approximately 350: 80 some-odd national banks; about 15 or 16 Federal Reserve member banks; and the remainder of them. So that would make, I would say, about 250 banks are non-members of the Federal Reserve System.

Q. Mr. Smith, I would like to show you the Federal Reserve Bulletin of April 1961.

Mr. MITCHELL. All you are going to want to show is the number of non-member banks?

Mr. ODEAR. That is all, yes, sir.

By Mr. ODEAR:

Q. Would you direct your attention to that Federal Reserve Bulletin and give us a specific answer to that question?

[585] A. There were 355 total commercial banks in Kentucky; 87 national banks; 16 state member banks; 242 insured banks—which of course are under the heading of "Non-Member Bank"—or 242 insured banks; and 10 non-insured, which would make a total of 252 non-member banks in Kentucky.

Q. Mr. Smith, prior to the merger of First National and Security Trust, did First National Bank have deposits from surrounding country banks?

A. Yes, sir.

Q. Do you know approximately how many the First National had immediately before the merger?

A. 58.

Q. And since the merger has been in effect, have any been added?

A. Two.

Q. The total, of course, is now 60?

A. 60.

Q. Approximately how much money did you have on deposit as of the close of business in 1960 prior to the merger from correspondent banks in Central and Eastern Kentucky?

A. Slightly less than $6 million.

Q. Mr. Smith, if it is true—as you have already testified—that Lexington is strategically located to attract this business,

why have you only been able to add two banks [586] since the merger went into effect?

A. I would be reluctant to solicit additional accounts because a correspondent bank relationship is a rather permanent relationship, as most bank accounts are; and I would be very reluctant to ask them to change some of their procedures and methods so long as this suit is under way.

Q. Based on your experience that you have described, Mr. Smith, tell us what in your opinion the First Security Bank and Trust Company will be able to do in this field if this case is decided so that the merger is permitted to stand.

A. You mean just all things?

Q. What in your opinion, and based on your experience, will you be able to do in connection with obtaining business of the correspondent bank type after this case is decided in the event the merger is permitted to stand?

A. Although I have had charge of the Correspondent Bank Department, I can't say that we have really established a Correspondent Bank Department that would take care of all of the services that we can and should render.

One of the reasons for the merger was that we might give a better capital ratio and might commence solicitation. Of course in soliciting the business, you must prepare for it by enlarging the transit department and by various changes which [587] you would need to render real services to these banks that would compete somewhat, to begin with, and ultimately compete fully with Cincinnati and Louisville.

I think that we can start immediately doing just those things and building a real Correspondent Bank Department.

Q. What do you mean by immediately?

A. As soon as it has been finally decided.

Q. What if anything has this merger accomplished in the way of enabling or putting the merged bank in a position to secure more of that type of business?

A. I think the capital ratio is one of the most favorable factors now that we can show. So far as the size of the bank is concerned, there might be some advantages to it when we are competing with Cincinnati and Louisville; but I don't believe there are any advantages so far as competing with local banks,

other than in the case of a few places where the smaller country bank knows that he is going to have frequent use for a loan based upon our capital, which would be $500,000 under the First Security.

I believe I have heard the testimony of others here, and I believe $250,000 would be the other competitor for this field.

I do not think that that would make a particle of difference so far as giving us a competitive advantage which this merger has done, because they couldn't get that business anyway. It [588] would remain in Cincinnati or Louisville where it is now.

I am referring now only to those few cases where the bank would want to borrow in a participating loan as much as $500,000. We would not be in competition with them anyway. It would remain in Cincinnati and Louisville.

Q. State whether or not the fact that you are able to make loans of a larger size by reason of your larger lending limit put you in a better position to compete with Louisville and Cincinnati.

A. I think so, definitely. There are several towns where the tobacco markets are located and the warehouses need to borrow more than the $250,000 which we could lend.

Q. Is that one of the things that a small country bank looks to its city correspondent for?

A. It is one of the best services that we render for them.

Q. Tell the Court what area the First National Bank and Trust Company served correspondent banks in prior to the merger.

A. Central and Eastern Kentucky.

Q. I believe you said that, prior to the merger, you had 58 correspondent banks in that area?

A. That's right.

Q. I would like to show you a map, Exhibit No. 11, which [589] indicates the location of the various correspondent banks of the First National Bank and Trust Company prior to the merger.

I will ask you to look at that and tell the Court what that map indicates as to the location of those correspondent banks generally.

[590] A. You mean for me to name counties or cities of the out boundary?

Q. Just generally where does that show that your correspondent banks were located?

A. We go immediately south of Lexington, as far as Corbin and Somerset. We go southeast as far as Whitesburg. And we go again southeast to Pikeville. Then we go on up as far into the northeast, which is almost—well, yes, it is a little northeast of Lexington—as far as Olive Hill. Then we go across around Flemingsburg, to Germantown, and across to Dry Ridge, to Owenton, to Shelbyville. The majority of the banks, of course, are within that general boundary.

Q. How does that general area compare with the general trading area for all commercial and retail and wholesale and industrial business of Lexington?

A. I think it is identical.

Q. Does that geographic significance of the area in which you do correspondent bank business and Lexington's general retail, wholesale, and industrial trade area give, to your mind, any advantage to Lexington in competing with Louisville and Cincinnati for correspondent bank buisness?

A. Yes, I think so.

[591] Q. Explain to the Court how?

A. I think the bankers themselves are in the habit of coming to Lexington, they and their families, for the various services—shopping, to the hospitals, medical treatment, to the sports events, and for social events—until I think that most of the bankers and many of their customers who would be needing the large lines of credit, would no doubt be acquainted with many of our Directors, certainly our officers.

So that I think the bankers themselves in bringing probably their most prominent or one of their best depositors would feel a little bit freer. Certainly we have a shorter drive. I think that just the general economic and social ties and many of the bankers and all were educated here at the University of Kentucky, many of their attorneys, and their general connections. So, it is all just like one big community or area. We are proud of our bluegrass area especially.

Q. Do you think that would be an advantage in the field of participating loans with banks in that area?

A. Yes, I do.

As I mentioned briefly, I think that the knowledge and acquaintanceship that many of our Directors, or directors of any bank in town for that matter, would help in deciding [592] on loans, and would help us in convincing the bankers that they can obtain participation from our bank with them easily.

Q. I believe that you stated one of the principal services that a correspondent bank of the city renders to its smaller correspondent in the country is the clearing of checks and items of that type.

Does Lexington's geographic location and the type of communications which now exist between central Kentucky and eastern Kentucky and Lexington have any competitive advantage in that field as against Louisville and Cincinnati?

A. I think it is shorter. And I think that there is a great deal—I wouldn't know exactly how you could compare the number or volume of checks; but if we are just trading within our small trade area, I have an idea that there are a great many more checks back and forth between our several—between Lexington and our several communities as shown here—that that would be even greater than in Cincinnati, if not in Louisville.

Q. Is the time it takes to clear a check of that type important or unimportant to the country banker?

A. I think it is important.

Q. Would you illustrate to the Court the advantage that Lexington would have over Louisville and Cincinnati [593] in the time required to clear checks under the normal course of business?

A. At the present time we do not send many cash letters, which are the letters which would contain the checks drawn on Georgetown or other towns, for instance. We do send those checks to these various banks. So in the case of where a bank sends its letter to us every day and we, in turn, send letters out to those various communities, then they could include those checks with us and we could clear them for them as rapidly as Cincinnati or Louisville; and when we establish our transit department, night transit department, why, we could have them there the next morning.

And in a few cases we could surpass even Cincinnati or Louisville. But on the items drawn on Lexington, many of the banks in the surrounding towns have customers who sell their produce in Lexington. And they receive checks on the Lexington banks.

So that when that customer deposits that check in one of the banks in the surrounding towns, that bank would send that check to Lexington. It would reach Lexington the next day, and through the clearinghouse association, if it were not on the bank to which it was sent, on our bank, for instance, the clearinghouse would enable us to have that [594] check in the bank upon which it was drawn during that day.

They have the one day delayed posting so that the next day they would either have to pay it or return it. And then it would come back to us. And if it were a sizeable amount under the agreement of clearings, we would have to call the correspondent bank that we are sending this check back, it was not paid. So, that would consume the two days.

Q. Two days?

A. Yes, two days.

Q. What would be the time required if that item were deposited in a correspondent bank in Louisville or Cincinnati?

A. It would leave the, we will say, Richmond bank this morning; it would reach Cincinnati or Louisville tomorrow, some of the Louisville banks. Only one that I know of would probably have a transit department there to clear that item. I am not too sure, but it probably would.

If it didn't, it would not reach them, of course, until Monday. Then with the one day's delayed posting, Tuesday would be the next day involved, which again they would phone. But we are consuming three days. But since [595] it happens to be a Saturday and a Sunday, we are consuming about five days.

But let's be fair and say that—let's put them both on the same basis; it will be two days for us, from four to five days for Cincinnati or Louisville, unless they have a clearing or a transit department working on Saturday and Sunday.

Q. Is that time lapse important to the country banker in your opinion, Mr. Smith?

A. Yes, it is.

In the first place, it is service which he is rendering his customer by attempting to collect the money or find out whether or not the money is good as rapidly as he can.

Then also the earliest that he can get that check back is his protection too in that the depositor in the meantime after four or five or six days, if holidays are involved, may start drawing on that, or maybe all of it. Because, frankly—maybe it should not be done, but a whole lot of us do it; we overlook the extra day or two there. So, if a man has checked all his money out and spent it, why, it might be difficult for the bank to collect its own funds.

Now, let me use another illustration in the case [596] of these large tobacco checks. They come to us, directly to us, because in many cases they are drawn on our bank. Many more of the banks in this area use us as a big depository—I will be frank with you, your Honor—during the tobacco market season than they do at other times during the year, even if they want us to transfer for them in a day or two to their larger city correspondents of Louisville and Cincinnati, which we can do by telephone, and the money is immediately available.

Q. You said another service that a correspondent bank renders was advice and suggestions as to investments and handling of business and matters of that kind.

A. Yes.

I heard the preceding witness. And I am like he is; I have been in this business long enough that it would take a long time for me to tell you how many services we can and do render for them. But that is a very important item in obtaining and retaining business.

Q. For that purpose do the officers of the smaller banks frequently come to the city where their city bank is located and have personal talks for advice purposes?

A. Yes. Or they send their employees to observe.

Q. Does the geographic location of Lexington give any advantage in that field over Cincinnati and Louisville?

[597] A. I think so.

Q. Mr. Smith, let me ask you this: you have enumerated numerous advantages in the competitive field that Lexington will have for this business over Cincinnati and Louisville.

Tell the Court whether or not in your opinion those advantages have prior to this merger been thoroughly exploited on behalf of Lexington and its banks?

A. No, sir.

Q. Since the merger, have you been able to do so?

A. No, sir.

Q. After the merger, will you be able to do so, if it is finally declared to be permanent?

A. We are certainly going to try.

Q. Tell the Court what you can do to exploit that advantage and get this business for Lexington?

A. The first thing to do is to ask them for the business and inform them that you have changed and improved or enlarged your transit department with their needs in mind, and that you are making a campaign with the banks here in central Kentucky to clear all of their central Kentucky items immediately surrounding Lexington through this bank and that we will have transportation, that we already have the buses and the mail services. And, as you will notice on the map, we go up to Hollis where the roads have been built, up into eastern Kentucky, which is two or three [598] or four hours maybe in some cases to reach Whitesburg, for instance.

Those banks now are sending more or less special items to us. It would not be any more difficult for them to include a lot of other items drawn on towns where we could furnish them a map just like this without clearing points.

And, so, when we explain that to them, what we are going to do, and that we can increase in a few cases—particularly in the tobacco market—that we could increase our loans to the point of where they need not go to Cincinnati or Louisville, I am convinced that we will begin getting business.

Now, because of the permanency and the relationship between a man and his banker, I don't know how rapidly this will come. Nor do I ever expect us to take a great portion of the business away from Louisville or Cincinnati. But I do know in my experience that if you are prepared for them and can render the service to them and that you have the convenience of the geographic location over any other competitor, that you can get that business.

Q. Mr. Smith, it has been stipulated in this case that there is on deposit in seven banks in Louisville and Cincinnati in excess of $133 million as of the end of last year from deposits from correspondent banks located [599] in central and eastern Kentucky. With that size of a pool to fish in, tell the Court what in your opinion—tell the Court how substantial an amount of business you think the First Security would develop in way of deposits for its bank in this field?

A. Well, without making a definite and specific promise to the several Directors and officers sitting around here, I think it should be very substantial.

I regret to say that it was not as large as Colonel Miller thought it was. But I think his guess was a logical guess, without being aware of all of it; that certainly we should be able to get several million dollars, which, in our case, and in the case of Lexington, if it were five percent of it, eight million dollars would go a long way toward alleviating the need for additional capital funds in the form of bank deposits in Lexington.

Mr. ODEAR. You may ask.

Cross-examination by Mr. MITCHELL:

Q. Mr. Miller, this stipulation that lists a total of $133 million includes, does it not, accounts held by those Louisville and Cincinnati banks from other Lexington banks?

A. Yes.

[600] Q. Do you expect to get any of that business?

A. No, it does not.

Mr. ODEAR. Yes, it does.

The WITNESS. Does it?

Well, yes. All right. I am corrected.

Mr. ODEAR. The stipulation so stipulated.

By Mr. MITCHELL:

Q. So that substantially reduces the area in which you can fish, doesn't it?

A. Not very much.

Q. It doesn't?

A. I would say maybe five, six, seven million.

Q. Well, you just said that an eight million dollar increase would be substantial. So, six or seven million is substantial?

A. I am bringing the money in. We have already got the other money. I am bringing new money in.

Q. It also includes [illegible] does it not, 62 banks out of 135 from which you [illegible] accounts, does it not?

A. That is right.

Q. So, $133 million is a little bit large, isn't it?

A. No, sir.

Q. You already have accounts from 62 of the banks?

A. That is right.

[601] Mr. ODEAR. Sixty instead of 62.

Mr. MITCHELL. Excuse me. Sixty.

By Mr. MITCHELL:

Q. And it includes deposits from four Lexington banks from which you had no expectation of getting accounts?

A. I am willing to reduce the $133 million by the, we will say, five or six million, if I am correct. I don't know. I don't have any idea what that is. And I would be willing to, say, reduce the six or seven million dollars that we have from it. But that still leaves quite a sizeable block of money from this area in Cincinnati and in Louisville.

Q. That is a sizeable block that you hope you can get?

A. Over a hundred million dollars. I don't hope to get all the hundred million. I hope to get a percentage of that, yes.

Q. You don't know how much you are going to get?

A. No.

Q. That is purely speculation? You don't really know that you are going to be able to get any?

A. I am sure I will.

Q. You are sure?

A. I am sure I have talked to enough bankers about it [602] over the years that if carrying out what they have given me reasons to believe, I think that we will get it.

I don't think we will take the account entirely away from Cincinnati or Louisville, because they will have need for those accounts just the same as they will have need for us.

Q. But you just now testified that you had not solicited accounts since this merger because the correspondent accounts of such permanent relationship are lifelong things. You haven't done any soliciting, have you?

A. I am asking them to give me the business that originates here in central Kentucky and that would be to their advantage to clear through us.

Q. Did you testify that you had not solicited any accounts since this merger occurred because of the fact that the merger was going on and a correspondent relation is a lifelong thing and you were reluctant to do so until this suit was finally settled?

A. That is right.

Q. You have not done any soliciting?

A. I have not.

Q. So then at least as far as correspondent accounts are concerned, which is the primary area within which you expect to increase deposits, the full effects of this [603] merger haven't yet been felt, have they?

A. That is correct.

Q. Now, there has been considerable testimony here, Mr. Smith—I believe Mr. Miles touched on it yesterday—that the primary area of competition among commercial banks is in the service offered. Do you agree with that?

A. In the service offered?

Q. Yes. In the type of service that they can offer their customers. Do you think that is correct?

A. Yes, I think that is correct. I think everything else is equal.

Q. Do you think that the size of the bank has anything to do with the type and quality of service that it can offer?

A. No.

Q. You don't?

A. No.

Q. I see.

A. I think that——

Q. Do you or don't you?

A. No, I don't.

Q. You do not?

A. No.

Q. I see. Is the service offered by First Security any better than the service which was offered by First [604] National prior to the merger with respect to correspondent accounts?

A. Only to the extent of the capital ratio.

Q. Only to the extent of the capital ratio?

A. That is right.

Mr. MITCHELL. I would like now to show the witness Government's Exhibit Number 129. That is the application filed by the Defendants in this case with the Comptroller of the Currency.

By Mr. MITCHELL:

Q. I would like to ask you to turn to page 18.

Now, Mr. Smith, before we get into this, you have just said that the size of the bank has nothing whatsoever to do with the quality of service that it offers. And now I would like to then say that any statement to that effect would, of course, be an incorrect statement, would it not?

Mr. ODEAR. I object to that as being argumentative.

The COURT. Gentlemen, why argue? Ask questions and get answers.

Mr. MITCHELL. All right.

The COURT. Don't argue with the witness.

By Mr. MITCHELL:

Q. I would ask you if you had anything to do with the [605] preparation of this application, Mr. Smith?

A. Yes, sir.

Q. You read it before it was filed?

A. Not all of it, no, sir.

Q. Would you read Item C on page 18.

A. "The anticipated increase in correspondent bank balances will also greatly enhance the service to this community. Conversely, the larger size will enable it to be of more service to its correspondent bank depositors."

Q. That is sufficient. I want to ask you a question about that.

This says, referring to the First Security Bank, that the larger size of the First Security Bank will enable it to be of more service to its correspondent bank depositors?

A. That is right.

Q. I believe you also testified that it is the capital structure of the bank which you will use as the selling point in connection with acquiring correspondent accounts?

A. I testified that the improvement in the capital ratio, of course, which is provided by the improvement, by the enlarged capital structure, will be one of the factors that I will use in soliciting.

Q. Yes.

[606] Mr. MITCHELL. I would like to hand to the witness Government's Exhibit Number 11.

By Mr. MITCHELL:

Q. This is a chart showing the total capital accounts of all commercial banks in Fayette County, is it not?

A. Yes, that is right. That is what it is headed.

Q. Can you tell me what the largest bank in Fayette County is now, Mr. Smith?

A. Since the merger?

Q. Yes.

A. The First Security.

Q. And taking First National and Security Trust combined there, which bank in Lexington has the largest capital structure?

A. You mean after the merger?

Q. Yes.

A. The First Security.

Q. What is the second largest bank in Fayette County?

A. In size?

Q. Yes.

A. Citizens Union.

Q. Which bank in Fayette County has the second largest total capital accounts?

[607] A. Citizens Union.

Q. What is the third largest bank in Fayette County? I am not talking about based on these figures.

A. I am not too sure. There are about three of them there pretty close together. I would say it is the Bank of Commerce.

Q. You would, sir?

A. That would be my guess, yes.

Q. Which bank in Fayette County has the third largest capital structure?

A. The Bank of Commerce.

Q. What is the fourth largest bank in Fayette County?

A. The Central, I believe, was larger at this last published statement.

Q. Up until just recently, though, hasn't it been Second National?

A. I think so, yes.

Q. What bank in Fayette County has the fourth largest capital structure?

A. The Second National.

Q. What is the smallest bank in Fayette County?

A. With the exception of what we just said, Central.

Q. Yes. Which bank in Fayette County has the smallest capital structure?

[608] A. Central Bank.

Q. So, capital structure is related to size, isn't it?

A. It should be. It should give a capital ratio, appropriate and proper capital ratio, yes.

Q. Yes.

So, at least to that extent the size of the bank is important, isn't it? You have testified that the capital structure of the bank is important. This demonstrates that at least in Fayette County the capital structure of the bank is related to size?

A. The Security Trust Company had a larger capital than any of the other banks in town; and yet it was not the largest bank.

Q. I am asking you now with respect to the figures on this chart, which you have just testified to. The size of the banks is in direct proportion to the size of their capital structure, is it not?

A. No, I don't think so.

Q. It isn't?

A. No. I think I can show you banks in the ——

Q. I am asking you about the five banks here to which you have just testified.

The Court. Well, he started to answer you.

[609] The Witness. I think this: that as a matter of sound banking—and I think that the supervisors would insist upon appropriate capital in relation to the deposit volume. But you take banking as a whole, I think that there are some banks with much larger capital that have much smaller deposits than others.

Now, in this particular case, I think it just so happens. But we were the largest bank; and we had the largest capital. Security Trust was not the second largest, but it was second in its capital accounts.

And I am talking about in general it isn't always true. But in our particular case, it follows right down the lines, yes, sir.

By Mr. MITCHELL:

Q. Now, you testified that one of the advantages to your correspondent depositors would be the fact that you now have a lending limit of $500,000.

A. To a few of them, yes, sir.

Q. Have you made any participations since the merger in excess of $250,000?

A. Yes, sir.

Q. Now, I believe you testified that you had fifty-eight accounts as of December 31, 1960; fifty-eight correspondent accounts?

[610] A. That is right.

Q. You have sixty now?

A. That is right.

Q. Didn't Security Trust have one when you merged?

The COURT. I didn't get the question.

By Mr. MITCHELL:

Q. Didn't Security Trust have one account when you merged?

A. I don't remember.

Mr. MITCHELL. I would like to submit into evidence, your Honor, at this time Defendant's answer to Government's interrogatory Number 4 which lists a total of fifty-nine.

Mr. ODEAR. It is already in evidence. We stipulated that.

Mr. HARVILLE. We will stipulate it.

The COURT. He justs wants to call attention to it.

Mr. HARVILLE. We have no objection.

The COURT. He justs wants to call attention to it in the record. The answer to the interrogatory states what?

Mr. MITCHELL. States there were fifty-nine accounts between the two banks combined as of December 31, 1960.

[611] The COURT. Is there any dispute about that?

Mr. ODEAR. No, sir.

The COURT. All right.

By Mr. MITCHELL:

Q. Now, I believe you testified that the consolidation will assist your bank in competing with Louisville and Cincinnati banks. But it will be of no assistance in competing with other banks in Lexington who may also be in competition for these accounts?

A. Yes.

Q. Is that a correct statement of what you said?

A. I think it is.

Q. Well, at least on the surface that seems to be a little bit inconsistent. Prior to this consolidation, your bank, the other banks in Lexington who so attempted, and the Louisville and Cincinnati banks were in competition for these accounts, were they not?

A. That is right.

Q. As a result of the consolidation, you have acquired some advantage, have you not?

A. In better capital ratio for these large accounts which we will be soliciting.

Q. Well, in addition, the larger size will enable your bank to hire specialized personnel, will it not?

[612] A. Either that or train them.

Q. Or train them?

A. Yes.

Q. So if that will operate as an advantage against one group of competitors, don't you think that will also operate as an advantage against another group of competitors?

A. No, sir, I do not.

Q. I wonder if you could explain that?

A. Yes, sir, I will try.

The local bank, the other local bank, wouldn't be able to get the business anyway, because of the capital——

Q. Do you know that?

A. Because their capital account would not persuade these banks who need the five hundred thousand dollar loan limit to come to them.

I think the size of the bank would help us compete with Louisville and Cincinnati banks just because while we are nearer, we are nearer being within striking distance of them. And in that respect, I think the size of the bank would do it. But when we are competing for the accounts of two small banks—I mean of one small bank out here in the State—and two of us are competing—because there is only one other one trying to get that business—when we are competing for that, I think that if the [613] capital account of the Citizens Union Bank is ample to take care of the excess loans which that bank needs, and they know the officers of the Central Bank and have a closer association with them socially, in school together, or they just like their personality better, I think they would go to the Citizens Union regardless of the fact that we are two and a half to three times larger than it.

I only say that size does give us an advantage in competing, not over the local banks, because they couldn't get the business anyway, your Honor; they don't have the capital account sufficient to take care of these larger banks. But I think—after all, they have to go to Louisville or Cincinnati now to borrow in excess of $250,000.

And I think when they are deciding whether or not they are going to give us a considerably greater portion of their deposits, I believe the size of our capital and the size of our bank makes a little bit more of an impression on them.

[614] Q. So you are now telling the Court——

The Court. He said it. You don't have to repeat it two or three times. We are just wasting time when you ask him to repeat an affirmative statement.

By Mr. Mitchell:

Q. Does your bank have a transit department?

A. Yes, sir.

Q. How many employees are in it?

A. I don't know. We have several other employees in there. Of course that is in that same big room. I sometimes think, next to the individual bookkeeping, that it is the largest department in the bank.

Q. How many employees are in it?

A. I don't know.

Q. Your bank is considerably smaller than three banks in Louisville, other than the Citizens Fidelity, is it not?

A. Considerably smaller?

Q. Yes.

A. There are two banks not very much larger.

Q. They are larger?

A. Yes, larger.

Q. Didn't you testify that in your opinion you thought only the Citizens Fidelity of the Louisville banks had a [615] transit department?

A. That is the only one I know about. I haven't heard of the others.

Q. You don't know?

A. You don't mean a transit department; every bank has to have a transit department. It may be just an hour in the afternoon. So they all have a transit department. What I referred to was the all-night or Saturday or Sunday force that picks up the cash letters from the banks all over the state, resorts them, sends them out by various means to the banks, so they will reach there the next morning.

I know of that because we use that service.

Q. You have that service?

A. I say we use that service. We are given that service.

Q. Your bank doesn't give that service?

A. No, sir, we intend to.

Q. You don't know how many other banks in Louisville or Cincinnati other than Citizens Fidelity does give that?

A. No, sir, I don't know.

Q. Your example of taking three days to clear a check in Louisville and three days here was based upon the fact that these other banks don't have that service?

A. No, sir. I am referring to checks on this bank, on our account right here, when I said that.

[616] Q. Only on checks drawn on this bank?

A. That's right, on this account.

Q. Are you planning on opening a night transit service, Mr. Smith?

A. If we meet with sufficient encouragement from the bank-

ers throughout this area in our plans, in discussing our plans with them, we will.

Q. Do you feel that it is an advantage to a bank to have a night transit service?

A. Yes, if they have many correspondent letters coming in and going out.

Q. So that if you have a night transit service and another bank competing with you did not have a night transit service, you feel that you would have some advantage over them?

A. There isn't any reason why the other one couldn't have it. They only have to have one man part-time.

Q. I said if you have one and another doesn't, you feel you would have some advantage over them, apart from the reasons why they don't have it?

A. I think so.

Q. In response to questions about your experience in banking, Mr. Smith, there was no mention made of your affiliation [617] with an organization called the Foundation for Commercial Banks. Are you familiar with that organization?

A. Yes, sir.

Q. Are you a member of the Committee of Sponsors of that organization?

A. Yes, sir.

Q. Is First National a member of that organization?

A. It pays its dues to it, yes, sir.

Q. First National was, and First Security is?

A. Yes.

Q. Would you say that one of the principal purposes of the Foundation for Commercial Banks is to sell the broad scope of services offered by commercial banks and only by commercial banks, and in so doing induce more and more people to use more and more of those services?

A. I think that is true, but with another motive. Do you want the other motive?

Q. No. What does the Foundation for Commercial Banks do for its members?

A. It handles advertising, national in scope, in various national magazines and on radio, TV; and also prepares the advertising which the local banks—which they prefer that all

local banks go in together and advertise it as a clearing. Some places, they do; some, they do not.

[618] Then it prepares these mats, services, and all so that the local bank can advertise on radio, TV, and newspapers on the same dates that these ads are appearing in national magazines.

Q. The primary thrust of the advertising by the Foundation is principally directed at distinguishing commercial banks from other financial institutions, is it not?

A. That's right.

Mr. MITCHELL. No further questions, your Honor.

Redirect examination by Mr. ODEAR:

Q. Mr. Smith, what is that other motive? I would like to hear it.

A. The other motive is to meet the competition from the savings and loan in their advertising which is national in scope.

Mr. ODEAR. That is all. No further questions.

The COURT. You are excused.

(Witness was excused.)

Mr. ODEAR. Your Honor, I wonder if we could have about a five-minute recess?

The COURT. I think so.

(A short recess was taken.)

Mr. ODEAR. I call Mr. William Boswell.

[619] Whereupon, WILLIAM E. BOSWELL was called as a witness and, after having been first duly sworn, was examined and testified as follows:

The CLERK. The witness, your Honor, is William E. Boswell.

Direct examination by Mr. ODEAR:

Q. Where do you live, Mr. Boswell?

A. Cynthiana, Kentucky.

Q. What business are you in?

A. Banking.

Q. What bank are you connected with and in what capacity?

A. With the Farmers National Bank, and I am vice president and cashier.

Q. What has been your banking experience, Mr. Boswell?

A. I have served in this capacity for seven years. Before

that, for approximately six or seven years, I was a director of the bank.

Q. Is your bank a member of the Federal Reserve System?

A. Yes, sir.

Q. Is your bank a national bank?

[620] A. Yes, sir.

Q. And it is, of course, insured by the FDIC?

A. Yes, sir.

Q. Do you maintain a correspondent relationship with other banks in larger cities?

A. We do.

Q. Just briefly and generally, why do you do so?

A. Well, for several reasons. For the services that the banks can offer us such as taking care of excessive loans and advising in the matter of investing in securities; and for banking problems that may arise that larger banks can advise and help with, that possibly we don't know the answers to.

Q. What about the clearing of checks?

A. The clearing of checks certainly is another.

Q. Based on your experience, Mr. Boswell, tell the Court whether or not in your opinion it is essential for your city correspondent bank to be in a city where there is a branch bank of the Federal Reserve System.

A. It is necessary that we have one correspondent bank in a city where there is a bank with a Federal Reserve System, yes; but it doesn't limit us to that, no.

Q. Do you limit yourself to one city correspondent bank?

A. No, sir.

[621] Q. Would you consider it sound banking principles to limit yourself——

A. No, sir, we do not, or possibly to two, even, or any other number.

Q. What do you in turn do for your city correspondent bank?

A. We maintain cash balances with them that compensates for the services that they render to us.

Q. At the present time is your bank a correspondent of the First Security National Bank in Lexington?

A. No, sir, it is not.

Q. Where do you maintain your correspondent——

A. We maintain a correspondent account with the First National of Cincinnati and Citizens Fidelity of Louisville.

Q. Mr. Boswell, if the consolidation of the First National Bank and Trust Company of Lexington and the Security Trust Company of Lexington is permitted to become permanent in this action, tell the Court whether or not in your opinion that merged bank would in any of the fields of service be in better position to serve you than the First National Bank would have been prior to the merger as a correspondent bank.

A. We would not consider the First National as a correspondent, with the capital structure and with the size bank. We would now consider it as a correspondent bank because [622] of the capital structure.

One of our problems, of course, is the matter of excessive loans, particularly during the tobacco season when it is necessary for our warehouses to borrow considerable money. Any correspondent bank that we associate with must be in position to take care of those loans.

The $250,000 limit that would have been set by your former capital structure would not have helped us in that area at all.

Q. Would the lending limit of your own bank, plus the new lending limit of the merged bank, enable you to take care of that business generally?

A. It would.

Q. Tell the Court whether or not in your opinion the geographic location of Lexington, being closer to Cynthiana and in a more comparable economic area—whether or not that affords in your opinion any advantage to the First Security National Bank and Trust Company in seeking correspondent business in Cynthiana.

A. Naturally the fact that both of us are within thirty miles of each other, we have very much the same problems, the same economic factors. Here you have a large tobacco market. Many of our people sell here; many of our people trade here, buying in the stores. We have many people working here in [623] your plants. There are many reasons why there is a close relationship between the operation of a bank in our area and this one here.

Q. Tell the Court whether or not it would be more convenient and whether or not you would feel freer in getting away from your bank to come to Lexington to have conferences for advice than going to Cincinnati and Louisville.

A. Naturally it is a little embarrassing to go to a bank with which you do not do business or keep a correspondent account. You naturally are not going to go to them for advice, certainly as freely as you would where you had a correspondent account with them.

Q. In the event that you should hereafter decide to establish a correspondent relationship with the First Security, what then would be the convenience in connection with going to your correspondent bank as compared to Cincinnati or Louisville?

A. From a personal standpoint, of course we are in Lexington much oftener than we are in either one of the other cities, where we have correspondent banks. There is opportunity there to get advice personally, to get answers to your problems, to discuss affairs that might come up.

Of course there is also the matter of direct check clearing with your bank here, which would be speeded up [624] considerably by having a correspondent account here.

Q. In view of these advantages that you have described since the merger why haven't you established an account with the First Security National Bank?

A. Because of this situation in which they are involved. Until this is settled here now, we see no point in going into it on a temporary basis.

Q. You mean the pending lawsuit?

A. Yes.

Mr. Odear. You may ask him.

Cross-examination by Mr. Noble:

Q. Mr. Boswell, you testified you do not now maintain a correspondent deposit with the First Security at all?

A. That is correct.

Q. You do maintain such deposits with banks in several other cities?

A. Two others.

Q. What is it which determines the amount of the deposit which you would carry with a particular correspondent? What

is it that determines whether you will increase a deposit with one and decrease it with another?

A. Without attempting to sound facetious, one would be the amount of money you have on hand. The thing that [625] would determine it would be the one that you would depend upon for the larger amount of services that they would render to you. In other words, an account is going to be proportionate to the services the bank would render to you.

Q. So in stating you would in all probability establish an account with the First Security, you are stating that you would expect them to render additional services to you?

A. Yes, sure.

Q. You feel that they could render services that the First National, prior to the consolidation, could not?

A. Yes.

Q. You feel that that is mainly due to the fact that they have increased their lending limit. Is that what you stated?

A. That would be one of the reasons. I think another reason would be the fact that, with the larger bank, they should have better qualified and better trained—I think it naturally follows better qualified and better trained personnel in the area of investments, securities, and so on.

Q. So you think it is an advantage to them to have a larger bank?

A. Certainly.

Q. Have you ever considered establishing a correspondent deposit with a bank in Lexington prior to the merger?

[626] A. No, not seriously.

Q. From what you have just stated, I would gather that if you had considered such a deposit, you would naturally look at which is the largest bank in Lexington, since the size of the bank, you stated, is an important factor?

A. That would not necessarily be true. It would be true in this particular case. If several of the banks were of a size that could handle our account, we would look at several of them, yes, to handle and do what we wanted done.

Q. So that, assuming that in a given city the personnel of several banks were all equally well qualified, size would be a

determining factor in selecting your correspondent, wouldn't it?

A. No, that isn't the reason we selected the two correspondents that we have. Size didn't determine it. There are other relationships. There might be business relationships, sometimes personal relationships—many other things.

Q. This factor of the increased lending limit and the increased capital structure: Wouldn't it have served your purposes as well if the lending limit and the capital structure had been increased by means other than merger? It didn't make any difference to you, did it, that it was increased by means of merger?

[627] A. No. Truthfully I would say not particularly.

Q. If they had sold additional stock and increased their capital structure that way, that would have served your purposes, would it not?

A. It would have helped some, yes.

Q. So the merger was not necessary in order to attract your correspondent account. Is that correct? The merger as such. All that you were interested in was a bank with a larger capital structure.

A. Larger capital structure, sufficient deposits. Of course the matter of making loans to a bank or in making any other loans, there must be sufficient money to make the loans. Not only capital structure is involved, but total deposits are involved and other things.

Q. Aren't you getting back to the case that you require a larger bank?

A. Yes.

Q. So that, if you were to consider two banks in Lexington, you would be likely to choose the larger?

A. Well, that would be within certain limits. Previous to this, there was no bank in Lexington that we felt could meet our needs. Of course now you only have one bank that can.

Q. You stated that you intend to establish an account [628] in First Security. Has anyone contacted you in the last ten months relative to opening such an account?

The COURT. You are putting things in the witness's mouth that might be misleading.

Mr. NOBLE. I am sorry.

By Mr. NOBLE:

Q. Do you intend to establish an account with First Security?

A. We probably will, when this is settled.

Q. Has anyone asked you in the last ten months whether you will establish such an account?

A. No, sir, they have not.

Q. How did they determine that you would in order to have you here today?

The COURT. I sustain the objection.

Mr. NOBLE. That is all.

Mr. ODEAR. That is all. Thank you very much.

(Witness was excused.)

Mr. ODEAR. Do you want another witness before noon, your Honor?

The COURT. No, I see it is 12 o'clock. We will recess until 1:30.

(Whereupon, at 12:00 noon, the Court recessed, to reconvene at 1:30 p.m.)

[629] *Afternoon Session (1:30 p.m.)*

Mr. ODEAR. I call Mr. A. Grant Beckett.

Whereupon A. GRANT BECKETT was called as a witness, and, being first duly sworn, was examined and testified as follows:

The CLERK. The witness is Mr. A. Grant Beckett, your Honor.

Direct examination by Mr. ODEAR:

Q. Where do you live, Mr. Beckett?

A. Huntington, West Virginia.

Q. And what business are you in?

A. Banking.

Q. How long have you been in the banking business?

A. Since the fall of 1939.

Q. With what banking institution are you now connected?

A. Huntington Trust and Savings Bank.

Q. And what position do you hold with that institution?

A. President.

Q. How long have you been with that particular [630] bank?

A. Since it was organized December 1945.

Q. Did you take an active part in the organization of the bank itself?

A. Yes, sir.

Q. How many commercial banks were there in Huntington in 1945 when your bank was organized?

A. Three.

Q. And what were they?

A. Twentieth Street Bank, First Huntington National Bank, and Guaranty National Bank.

Q. Can you give us any idea of the size of those three banks in 1945 when your bank was organized?

A. Two of them had total assets of approximately $7 million to $7½ million each. The other one had total assets of about $43 million.

The COURT. Did you say $43 million?

The WITNESS. $43 million, yes, sir.

The COURT. One of the three banks had $43 million?

The WITNESS. Yes, sir.

By Mr. ODEAR:

Q. Two banks, one had about $7 million and one about $7½ million and the other had $43 million?

A. That is correct.

[631] Q. What was the size of your bank when it was organized?

A. Paid-in capital of $150,000. Paid-in surplus of $75,000. No paid-in undivided profits.

The COURT. Mr. Beckett, what year did you start out?

The WITNESS. We started our present bank December 15, 1945. We were permitted to open our doors on December 15, 1945.

The COURT. All right.

By Mr. ODEAR:

Q. I have calculated here the percentage of assets held by the other three banks immediately before your bank was organized in 1945 and I come up with the figures that the Guaranty Bank had approximately 12.8 percent in total assets, the Twentieth Street Bank had approximately 11.6 percent in assets, and the

large bank, the Huntington First National Bank, had 75.6 percent of the assets. Is that figure approximately correct, sir?

A. Yes, sir.

Q. Now, your bank, then, went into competition with the three commercial banks that were already in operation there, did it?

A. Yes, sir.

[632] Q. Tell the Court whether or not your bank was able to successfully compete against those other banks, and particularly as against the one owning 75 percent or more of the assets?

A. Our percent of the total deposits of the city—I mean of the total resources of the city have increased. The percent of the total resources of the two other small banks have increased. The percent of the First Huntington National has decreased.

Q. What would that indicate to you as to the ability of the smaller banks, including your own, to compete with the larger banks?

A. The larger banks are always on the defensive. We establish our own policies and get our own customers and serve the public in the best way we can. And it has been a relatively easy job.

Q. How many commercial banks were there in Huntington as of the close of business of 1961?

A. Five.

Q. And as of 1961, what percentage of the total of all banking assets did the big bank, Huntington First National, have?

A. Approximately 54 percent.

Q. Approximately what percentage of that business [633] did your bank have by that time?

A. Approximately 8 percent.

Q. In that period of growth?

A. Yes.

Q. That you described?

A. Yes, sir.

Q. In competing with the First Huntington National Bank, have you found any areas, functions, or phases of banking in which you could not successfully compete with the larger bank?

A. None.

Q. Has it been your observations from the situation in Huntington and from your knowledge of banking in general that there are advantages to a small bank, relatively speaking, in competing with a bank the size of First Huntington National Bank?

A. A smaller bank can render individual service to its customers. It has a flexible book of rules. It does not have to establish a fixed policy for junior officers to follow.

And it can come in closer contact with its important customers. As stated before, it can render any service that a large bank can render.

Q. What do you find with reference to the ability of [634] the smaller bank to attend to the personal needs of its customers?

A. Large or small, a small bank can take care of the customers equally as well as the large bank.

Q. Do you find the friendly atmosphere of a bank is important in attracting business?

A. The greatest asset of any bank is public relations. And that has to do with the personal contact between the bank officers and its customers.

Q. In your competing with this larger institution, tell the Court whether or not you have found that this larger institution has any power or ability to cause your bank to fix its policies, practices, or prices in any areas by reason of its size as compared to yours?

A. No.

Q. Mr. Beckett, have you had an opportunity to examine the charts and plats and maps and other exhibits filed by the United States Government in this case here in Lexington?

A. Yes, sir.

Q. Based on your examination and study of those and your experience in banking in general, I want to ask you whether or not you believe that by reason of its size the merged bank here in Lexington has the power to exclude any [635] other local commercial bank from successfully competing with it in any field of commercial banking?

A. None whatever.

Q. Based on the same premise, state whether or not in your

opinion the merged bank would have the power to dictate to the other local banks and require that they follow the practices, policies, or prices of First National, or First Security?

A. To the contrary.

Q. Can you illustrate that?

A. The smaller banks can dictate to the larger bank.

Q. And have you had any experience which causes you to make that conclusion?

A. In our own instance in Huntington, a few years ago our bank was paying 1 percent interest on saving accounts. We decided to pay 2 percent. The large bank said it would break everybody. About six hours after we went to 2 percent, they went to 2 percent.

Q. In that instance which one of the banks dictated as to what you would pay for interest on saving accounts?

A. The First Huntington National, the large bank.

Q. I don't think you understood my question. Which one of the banks was able to dictate to the other bank, [636] if there was dictation, as to what rate of interest they would pay?

A. The smaller banks elected to pay 2 percent; therefore, we told the big bank we were going to pay 2 percent, and we did; so they followed us.

Q. I see.

A. The same thing happened when we went from 2 percent to 3 percent.

Q. Again based on your examination of these charts and exhibits, and on your experience in banking that you have related, state whether or not in your opinion the merged bank in Lexington would have the power to cause customers that other local banks now have to leave their local banks and to do business with the First Security?

A. That will also work in reverse.

Q. What do you mean by that?

A. The overhead of the large bank will go up; the smaller banks will have an advantage if they wish to take advantage of it of acquiring new customers. The larger bank will not—it will lose personal contact with a number of its customers and

the small bank will step in, if they are on their toes, and continue to grow.

Mr. Osmar. You may examine.

[637] Cross-examination by Mr. Williams:

Q. Mr. Beckett, you haven't had any experience in banking in Lexington, or Fayette County, have you?

A. No, sir.

Q. You are speaking from your experience in Huntington?

A. That is correct.

Q. How far is Huntington from Lexington?

A. About 125 miles. Would that be a good guess? About 125 miles.

Q. What is the nature of the geographic area of Huntington?

A. It is hill country.

Q. How long is the city? Isn't it located on a river and extends a long way up and down the river?

A. The city is perhaps ten miles long and perhaps two to three miles wide.

Q. Do you know whether or not any of the banks in Huntington are presently engaged in negotiations to merge?

The Court. I didn't hear you, Mr. Williams.

Mr. Williams. I asked him, your Honor, if he knew whether or not any banks in Huntington were presently engaged in negotiations to merge.

[638] The Witness. No, sir.

The Court. Did you understand the question?

The Witness. Yes, sir. The answer is no.

By Mr. Williams:

Q. You haven't heard any talk to that effect in Huntington recently?

A. No, sir.

Q. What type of banking services does you bank provide, sir.

A. The same service any other bank in the world handles except foreign exchange, which we leave strictly to our New York banks.

Q. Do you have, for example, a bond department in your bank?

A. Yes, sir.

Q. Do you have a farm division?

A. Yes, sir.

May I go ahead?

Q. Just answer the questions, please.

A. All right.

Q. Mr. Beckett, how much time did you spend in going over the Government's exhibits you testified about? Which exhibits did you look at?

A. I looked at the charts, ratios of comparative [639] assets, the loan volume.

Q. Whose exhibits were they; do you know?

A. They were prepared by the Government. And I had a set also which was perhaps prepared by the attorneys for the two merged institutions.

Q. Approximately how much time did you spend going over those exhibits?

A. I would say maybe eight hours from time to time.

Q. Did you look at the report of the Federal Reserve Board to the Comptroller of the Currency?

A. I studied those more from our own state than from the State of Kentucky.

Q. My question was did you look at the study, the report of the Federal Reserve Board to the Comptroller of the Currency in connection with this consolidation?

A. I did. But don't ask me about my memory.

Q. You don't remember anything about that?

A. Not too much. It was some time ago.

Q. How long ago was it?

A. I would guess three to four weeks.

Q. But you don't remember much in it?

A. That is right.

Q. Did you look at the report of the Federal Deposit Insurance Corporation made to the Comptroller of the [640] Currency in connection with this consolidation?

A. Yes, sir.

Q. Do you remember much about that?

A. Almost as vague as the other one.

Q. What other documents did you look at besides the charts?

A. A recent comparative statement of assets, liabilities, ratio of loans to deposits, ratio of capital structure.

Q. Can you remember some other charts you looked at?

A. I don't think so.
Q. Those are the only ones you can remember?
A. As far as I can tell.
Mr. WILLIAMS. That is all, your Honor.
Mr. ODEAR. One other thing I wanted to ask you and I forgot to ask you, if I may.

Redirect examination by Mr. ODEAR:

Q. What is the population of Huntington, West Virginia?
A. 84,000 within the city limits.
Q. What is the population of the county in which Huntington is located?
A. 108,000.
[641] Q. And you have, I believe you said, five commercial banks operating there?
A. Yes, sir.
Q. Do you feel that is adequate to serve the needs of the borrowers of the community?
A. Yes, sir.
Mr. ODEAR. That is all.
Thank you very much.
The COURT. You may be excused.
(Witness excused.)
Mr. ODEAR. I call Mr. James Phil Smith.
Whereupon J. PHIL SMITH was called as a witness, and being first duly sworn, was examined, and testified as follows:
The CLERK. The witness, your Honor, is Mr. J. Phil Smith.

Direct examination by Mr. ODEAR:

Q. Where do you live, Mr. Smith?
A. Jackson, Kentucky.
Q. What business are you in?
A. The banking business.
Q. What bank are you connected with?
[642] A. I am connected with the First National Bank of Jackson and the Bank of Hindman at Hindman, Kentucky.
Q. What positions do you hold with each of those banks?
A. I am President of First National of Jackson and I am Vice President and Director of the Bank of Hindman.
Q. Are you connected with Lees College?
A. I am a Member of the Board, yes, sir.

Q. How long have you been engaged in the banking business?

A. Approximately fourteen years.

Q. How long with the bank at Jackson?

A. Fourteen years.

Q. Is the Bank at Jackson a member of the Federal Reserve System?

A. Yes, sir.

Q. How about the Bank at Hindman?

A. No, sir.

Q. Are either of them national banks?

A. The one at Jackson is, yes, sir.

Q. The one at Hindman is not?

A. That is right. It is a state bank.

Q. Are they both insured in the Federal Deposit Insurance Corporation?

[643] A. Yes, sir.

Q. What District of the Federal Reserve System are your banks located in?

A. We are in the Cleveland District.

Q. Where is your nearest Federal Reserve Branch?

A. Cincinnati.

Q. Do you maintain correspondent relationships with other banks located in larger cities?

A. Yes, sir. In Louisville.

Q. How many correspondent banks do you keep deposits with?

A. We have approximately five, I believe.

Q. Where are they?

A. In Louisville and here in Lexington.

Q. Louisville and Lexington?

A. Yes, sir.

Q. Do you have any in Cincinnati?

A. No, sir.

Q. In determining the location of a city bank to do your correspondent banking business with, is it a major factor that you choose a bank in the same city where a branch of the Federal Reserve is located?

A. No, sir, it isn't.

Q. Why is that not necessary for you?

[644] A. I don't think we have to because of the ability to draw on our banks to keep our reserve up to par, what we are supposed to according to law. I don't find it necessary at all.

Q. Why does your—why do your two banks maintain correspondent bank relationships at all?

A. Well, we do it for various reasons. Of course, for check clearance, for advice on investments, and for loan participation when a customer of ours might apply for a loan which exceeds our legal limit.

Q. How many banks in Lexington do you maintain correspondent balances with?

A. Just one.

Q. Just one?

A. Yes, sir.

Q. What is that one?

A. The First Security.

Q. How long have you maintained that relationship with the First Security?

A. About——

Q. Well, first of all, with one of its predecessors. Did you keep an account with First National?

A. Yes.

Q. How long did you maintain that account with them?

[645] A. About seven or eight years.

Q. Will the increase in the lending limits and the change in the capital structure and the increase in the deposits in the First Security National Bank over the old First National Bank be of any benefit to your banks?

A. Yes, sir, I think so.

Q. Tell the Court in what way you feel your banks will be benefitted by that change.

A. Of course, in looking for a correspondent, we do look at the capital structure of a bank, the size. But we are primarily interested in the services which a correspondent can give us. And we do feel that with the merger that the First Security National will be able to provide services for us which we haven't felt free to call upon them for in the past.

The COURT. Mr. Smith, will you turn your face this way so I can hear you?

The WITNESS. I am sorry, your Honor.

By Mr. ODEAR:

Q. In the field of loan participation, Mr. Smith, are there any characteristics or facts which would make it more desirable for your banks or either of them to seek loan participation in Lexington rather than in Louisville or Cincinnati?

[646] A. Yes, sir. I believe so.

We, from time to time, have to call on our correspondents to participate in loans with us. And in the relationship with our own customers, we have found it very difficult to convince them of the idea of going as far as Louisville for loan participation, because Lexington is their center culturally, socially, sportswise, for medical care, hospitals; they all come here for all those features; and they are more familiar with Lexington.

And, of course, the distance has quite a bit to do with it too.

Q. Would you think the new highway will affect that to any extent?

A. Yes, sir. We hope to be able to get to Lexington now within an hour and a half easy driving time when the new highway comes in.

Q. Based on your experience in banking and with particular attention to the field of correspondent banks, Mr. Smith, if the Merger of the First National and the Security Trust Company is allowed to become permanent by the Court, and if it is able by reason of the merger to improve its services as indicated, do you think that there is going to be any—do you think that the merged bank will have any ability to increase its business in the [647] correspondent bank field in your area?

A. Yes, sir. I, of course, can only speak for myself personally. I would welcome the opportunity to increase my account with this merged bank and have more activity in it where I haven't felt free to call upon them before.

Q. Is the geographic location of Lexington as compared with Louisville and Cincinnati such that it would give any competitive advantage to the Lexington bank over the banks in Louisville and Cincinnati with reference to giving you advice as to the handling of your problems and your calling on the

bank and participating loans and check collection and the various features of correspondent banks?

A. Yes, sir, I think it would be a decided advantage.

Q. Based on your experience, do you feel that that would or would not be true with reference to other banks in eastern Kentucky near the geographic location of your bank?

A. I think it would be true of all of them, yes, sir.

Mr. ODEAR. You may ask.

Cross-examination by Mr. SPAETH:

Q. I believe you stated, sir, that prior to the [648] merger there were service in which you were interested which you did not feel free to call upon the First National Bank to render; is that correct?

A. That is true, yes, sir.

Q. What are those services?

A. Well, I possibly could have availed myself of them. But because they didn't have a correspondent setup as such, as we know it, I didn't feel free to impose upon them by asking their advice about bonds or other securities we might have had investment, or for loan participation, or just general banking problems which I myself didn't understand which someone in their field might have.

Q. Do you get investment advisory services and banking problem advisory services from your Louisville correspondent?

A. Yes, when we need it, yes.

Q. What kind of services do you believe that First Security now has that it didn't have before?

A. Well, as I stated a moment ago for the setup under the merger which I think they will be able to handle more correspondent business, they will increase their personnel in all probability in the correspondent bank department, and we will feel more free to call upon them after they do.

[649] Q. What have they actually done that you know about?

A. What do you mean?

Q. Since the date of the merger, to increase the number of services?

A. Well, I don't know of anything that they have actually

done, because we only have an inactive account with them at this time.

Q. You are just assuming that this will occur by reason of the merger?

A. Yes. I hope it will, yes.

Q. But you don't know?

A. No, I am not on their Board.

Q. Have you talked to other bankers in your area to find out whether they regard the merged bank as being able to offer superior correspondent banking services than the merging institutions were capable of providing?

A. Yes, I have talked to some of them.

Q. You have talked to them?

A. Yes.

Q. Do you know what the lending limit was of First National; that is, prior to the merger?

A. I think it was a quarter of a million dollars.

Q. And now it is what?

A. A half million.

[650] Q. What is the size of your bank, sir?

A. The First National is just under four million.

Q. And your lending limit?

A. $22,000.

Q. What is the total amount of your correspondent bank deposits held in other institutions?

A. Well, they are approximately $600,000.

Q. And those, I believe you said, were in five institutions?

A. Yes.

Q. Including the one in Lexington?

A. Yes.

Q. And how much is in the First Security at this time?

A. I believe we have around $70,000.

Q. About $70,000?

A. Yes.

Q. I believe you stated that your customers are concerned about where the banks are which make loan participations with you and loans to them?

A. I made the statement that in talking to our customers about loan participation with other banks, that—of course,

we have only spoken to them in terms of our Louisville correspondents—that they were reluctant to go [651] as far as Louisville for that service.

Q. How many loan requests do you have for loans in excess of $250,000?

A. We have none, of course, in our bank.

Of course, the bank itself might have a request for temporary funds in excess of that. That could be. It has not occurred so far.

Mr. SPARTH. No further questions.

Redirect examination by Mr. ODEAR:

Q. One other question I forgot to ask: If you should in the future increase the services which you receive from the First Security National Bank as a correspondent bank, what effect, if any, would that have on the amount of money which you would keep on deposit with the First Security National?

A. We would keep a compensating balance. We would increase our balance with the First Security National.

Mr. ODEAR. That is all. Thank you, sir.

The COURT. Gentlemen, any further need for Mr. Smith?

Mr. ODEAR. No, sir.

The COURT. You may be excused.

(Witness excused.)

Mr. HARVILLE. Mr. C. O. Elliston, please.

[652] The CLERK. The witness, your Honor, is Mr. C. O. Elliston.

Direct examination by Mr. HARVILLE:

Q. Are you in the banking business, Mr. Elliston?

A. Yes, sir.

Q. What bank are you with?

A. State National Bank, Frankfort, Kentucky.

Q. How long have you been with that bank?

A. Thirteen years.

Q. What is your present position with it?

A. President.

Q. How long have you been president of it, Mr. Elliston?

A. Approximately eight months. However, my duties have been the same the entire time I was there.

Q. Have you been the chief executive officer during the entire time you were there?

A. Yes, sir.

Q. Prior to that were you in the banking business before?

A. Yes.

Q. Where?

A. I was Deputy Banking Commissioner for the State of Kentucky.

Q. When was that?

[653] A. From May of 1948 until February of 1949.

Q. Have you had any other banking experience prior to that?

A. I was cashier of the bank in Williamstown from 1943 until 1948. I was assistant FDIC Examiner from 1942 to 1943. And I had worked in the Bank of Williamstown from 1934 to 1942.

Q. Is your bank a national bank, you say?

A. Yes, sir.

Q. And as such it is a member of the Federal Reserve and the Federal Deposit Insurance Corporation?

A. Yes, sir.

Q. Which Federal Reserve District are you located in, Mr. Elliston?

A. St. Louis; the eighth.

Q. Is that different from the one we are now sitting in?

A. Yes, sir.

Q. Which one is this?

A. Cleveland; the fourth.

Q. Do you maintain correspondent bank balances with city banks?

A. Yes, sir.

Q. Do you have any now with First Security?

A. Yes.

[654] Q. Did you have any prior to the merger with First National?

A. Yes.

Q. You know generally the set-up of the merged bank now as opposed to the capital structure and the lending limits of the old bank?

A. Yes, sir.

Q. Based upon your experience as a banker, is the First Security in any better position to serve banks situated such as you are than was the old First National?

A. Yes, sir.

Q. Can you give us any examples to illustrate your answer in that respect?

A. Yes, sir. This summer we had loan applications for a total of $307,000. Our loan limit is $40,000——

Q. Speak up, please, sir.

A. Our loan limit is $40,000. I was able to lend $37,000. The First Security loaned $270,000.

Q. Does the knowledge that First Security's officers might possess of the economy in your area in your opinion enable them to be of better service to banks situated such as you are, than either banks in Louisville or in Cincinnati?

A. Yes, I think so.

Q. With reference to the specific example that you gave [655] us, could you have obtained a participation loan for the customer that was involved in that from either Louisville or Cincinnati?

A. No, sir.

Q. Why not?

A. The loan application had certain features, the granting of which depended on the individuals and their character, their financial condition, their equities in other properties, that only personal knowledge would have permitted an affirmative answer.

Q. I take it by reason of the fact that you got it that First Security's officers did have that personal knowledge?

A. Yes.

Q. You feel you could not have obtained the same loan in Louisville or Cincinnati?

A. I wouldn't have tried.

Q. Based upon your experience as a banker, does the fact that your bank is now located in the 8th Federal Reserve District and the First Security is in the 4th Federal Reserve District preclude banks in your district from doing correspondent business with the First Security?

A. No.

Q. What effect, if any, would that have upon your doing [656] correspondent business with First Security—the difference in the Federal Reserve districts?

A. Very little, if any.

Q. Check clearing: Would it affect you to any extent in that field on checks that were in the eastern part of the state that your bank might acquire?

A. In the matter of check clearing, which has become a greater problem since Kentucky has adopted the Commercial Code, the quickness of check clearing has become very important.

The COURT. I wish you would keep your voice up. I am very much interested in what you say, but it doesn't do me any good if I can't hear it.

The WITNESS. Excuse me, your Honor. The quickness of check clearing has become even more important since the adoption of the Commercial Code which allows an extra day for banks to hold checks.

If the First Security can demonstrate to me that they can clear in Central Kentucky faster than our other correspondent banks, then I certainly would be inclined to use their clearing facilities.

I would like to enlarge just a little bit. Frankfurt and Lawrenceburg are fifteen miles apart. A Lawrenceburg check deposited in Frankfurt would take from five to seven [657] days to clear—seven days assuming a holiday on Sunday.

If that time could be shortened, then certainly the bank that could shorten that time would get more business.

By Mr. HARVILLE:

Q. Based upon your knowledge and experience and the geographical location of Lexington to you, if it should undertake to provide you with check clearing service, should it be in a position to be able to render you more prompt service than that?

A. Yes.

Mr. HARVILLE. You may ask him.

Cross-examination by Mr. MITCHELL:

Q. If another bank in Lexington were able to provide you with equally quick check clearing service——

The COURT. Start your question again.

By Mr. MITCHELL:

Q. If another bank in Lexington were able to provide you with equally fast check clearing service, would you maintain a correspondent account there?

A. Because of our present relationship, probably not. But I wouldn't say absolutely not.

Q. But probably not?

A. Probably not, unless they were able to provide even [658] faster service than the one we are using.

Q. Has First Security demonstrated the ability to clear checks faster for you than any other bank with which you have correspondent relations?

A. Only on the checks I have sent them which have been on Lexington itself.

Q. Only on Lexington checks?

A. Yes.

Q. Was First National faster than any other bank in clearing Lexington checks before the merger?

A. Yes, sir.

Q. So there has been no difference, has there? There has been no change as a result of the merger in the speed with which checks are cleared?

A. Not on Lexington, no.

Q. You stated that the two things which the merger has enabled First Security to provide better service on are the increased lending limits and the change in the capital structure. What is the change in the capital structure?

A. Dollar-wise I am not sure. I am concerned with their lending limits, which were $250,000 as opposed to the present $500,000. I assume that that means $2.5 million capital and $5 million capital.

Q. So it is really one thing, isn't it? It is the lending [659] limits as based upon the capital structure?

A. That's right.

Q. So all you are interested in is the fact that they now have a larger lending limit than they had before?

A. That, and the additional safety that a larger capital structure provides.

Q. Do you know that the total capital structure is greater than it was before?

A. It is bound to be, with increased limits.

Q. Aren't the increased limits based only on a portion of the total capital structure?

A. Ten percent, I believe.

Q. But only on capital and surplus, not on undivided profits and reserves, which are also a portion of the capital structure.

A. Certainly.

Q. This $307,000 loan which First Security assisted you in: You didn't attempt to get assistance from your correspondents in Louisville and Cincinnati?

A. No, sir.

Q. What is the amount of your deposit with First Security?

A. I think right now about $65,000.

Q. How much was it on the average prior to the merger?

[660] A. I think last year our average was around $100,000, but it increased during the tobacco season. I have siphoned those funds off to put in our Federal Reserve Bank in Louisville, as my reserve requirements needed there.

Q. There actually has been a decrease in the account with First Security from prior to the merger until after the merger?

A. The decrease has been in all my funds because right now we are a little tight for cash because of investments.

Mr. MITCHELL. No further questions.

Mr. ODEAR. Thank you, Mr. Elliston. Will you gentlemen have any further need of this witness?

Mr. MITCHELL. No, sir.

(Witness was excused.)

Mr. ODEAR. Mr. Dewey Daniel.

Whereupon, DEWEY DANIEL was called as a witness and, after having been first duly sworn, was examined and testified as follows:

The CLERK. The witness, your Honor, is Mr. Dewey Daniel.

Direct examination by Mr. ODEAR:

Q. Where do you live, Mr. Daniel?

[661] A. I live at Hazard, Kentucky.

Q. Are you in the banking business there?

A. I am president of the Peoples Bank, and I have other interests there.

Q. You are not only in the banking business, but you are in various and sundry other businesses in Eastern Kentucky, are you not?

A. I am in the insurance business. We operate—my family and another fellow operate the television cable system; and we have interests in land properties on which coal mines are being operated.

Q. How long have you been connected with the bank there?

A. I have been connected with the Peoples Bank since 1928. That bank was at Vicco in 1928, and it moved to Hazard on December 24, 1928. That was during the depression. During the depression we had some nine or ten banks that failed in the Kentucky River Valley.

The Peoples Bank at that time had $15,000 capital and about $250,000 on deposit. Today we have about $650,000 in capital, and our totals are about $7 million.

Q. Does your bank keep correspondent bank balances with other banks?

A. Yes. We have a bank account in New York, Chicago, Cincinnati, two in Lexington, the Citizens Union and the [662] First Security, the Louisville Trust Company, Citizens Union, and I believe the Louisville Bank—I am not sure.

Q. Mr. Daniel, are you familiar with the change in the capital structure and the resulting change in the lending limits of the First Security Bank as a result of the merger of the First National and the Security Trust Company?

A. All I know is just what I read in the paper about it.

Q. What do you understand that to be?

A. That the banks were combined and would operate in the name of the First Security.

Q. Assuming, Mr. Daniel, as has been shown in evidence, that the First Security now has a lending limit of $500,000 unsecured, and previously the First National had a lending limit of $250,000, tell the Court whether or not in your opinion the new bank would be able to do anything more by way of service to correspondent banks in your area than the old bank?

A. Well, if they were inclined to do so, it would be a great help to us. I don't know whether they would be inclined to do it or not, but we have kept money through the years with the two banks in Lexington—that is, Arch Mainous' bank and Bill Courtney's bank.

Whether or not they would be inclined to come in and [663] help us or not, because we have been in a distressed area up there for so long there is no long-term capital—every insurance company except one has withdrawn from the area. The only money that we have in that section, long-term, is what we can get out of the SBA.

During the flood in 1957 our bank and the other bank participated in a loan with SBA. We finally came out of it, but we have had no long-term capital in that area for many years.

Q. What could this new bank do to help you that the old bank couldn't have done if they are inclined to do so?

A. If they are inclined to do so, they could participate in certain loans that the banks cannot handle, because of limit and size and so forth.

Q. Tell the Court whether or not there is a real need in your community for that service at this time.

A. I would say we need long-term capital. In the last year and a half we had a Federal Savings and Loan Association to organize, and they have loaned $2 million in our county, and in three or four adjoining counties.

I think they have just scraped the surface.

Q. Mr. Daniel, is it necessary in your opinion for your correspondent bank to be in a city where there is a branch of the Federal Reserve System?

[664] A. Of course it might be helpful. For two years this bank in Lexington here was the clearing house for all of our Kentucky checks. Of course at that time the mail service was a little bit in favor of the Lexington bank. But now, since the mails are all on buses, there is not much difference.

Q. Do you think that the Lexington bank is in a position to render you good service in that particular field of correspondent banking as a Louisville bank is?

A. As I said before, they are in position to do it if they are inclined to do so.

Mr. ODEAR. You may ask him.

Cross-examination by Mr. NOBLE:

Q. Mr. Daniel, do I understand from your testimony that, insofar as you are concerned, there has not been any difference as a result of the merger in the service which is being offered you by First Security?

A. I don't know about the service. There hasn't been too much service rendered except we keep a small balance on deposit at the First Security.

We also keep an account at the Citizens Union here, and they have been very nice and all. But most of our checks are cleared through Cincinnati and Louisville.

Q. You don't anticipate, do you, that there will be [665] any radical change in the amount of deposit you keep in Lexington, vis a vis Louisville?

A. It depends on what they would be inclined to do for us. If they want to come in and help us participate in our loan, of course naturally we are going to increase our balances with them.

Q. But as of now there has been no change?

A. That is right.

Mr. NOBLE. That is all.

Mr. ODEAR. That is all. Thank you.

(Witness was excused.)

Mr. HARVILLE. Mr. Frank Routt.

Whereupon, FRANK ROUTT was called as a witness and, after being first duly sworn, was examined and testified as follows:

The CLERK. The witness, your Honor, is Mr. Frank Routt.

Direct examination by Mr. HARVILLE:

Q. Are you in the banking business?

A. I am.

Q. Where?

A. Lawrenceburg, Anderson County, Kentucky.

[666] Q. What bank are you with, Mr. Routt?

A. Anderson National Bank.

Q. What position do you occupy with that bank?

A. President.

Q. How long have you been president?

A. Probably the last twenty years.

Q. How long have you been in the banking business altogether?

A. Forty-three years.

Q. Your bank is a national bank, I believe you said?

A. It is.

Q. And, as such, it is a member of FDIC and the Federal Reserve?

A. Yes.

Q. What Federal Reserve District are you located in, Mr. Routt?

A. Eighth.

Q. As stated before, this is the Fourth Federal Reserve District we are now in. Right?

A. I think so.

Q. Would the fact that you are in the Eighth Federal Reserve District and the First Security is located in the Fourth Federal Reserve District preclude your bank from doing any correspondent banking business with First Security?

[667] A. No.

Q. You do have to maintain some reserve balances with your Federal Reserve Branch bank in Louisville?

A. Oh, yes.

Q. Does the fact that Lexington has no branch of any Federal Reserve bank in your opinion preclude the possibility of First Security being able to obtain any correspondent banking business in this field?

A. I see no reason why it should.

Q. It doesn't make any real difference whether it has a branch bank of the Federal Reserve or not, does it?

A. No.

Q. Is there any similarity in the economy of your area or any tie-ins in the economy of your area with Lexington that, in your opinion, would enable the officers of First Security to be able to render any service to you and your customers that would be superior to what you might receive in Louisville or Cincinnati?

A. I think so.

Q. Tell us what you have in mind.

A. Lawrenceburg is about 22 miles west of Lexington. We feel that we are in the trade area of Lexington. As a matter of fact, sometimes I think probably we may be just a suburb of Lexington. There are many things that are equal [668] between our community and Lexington.

I have seen it grow in the last few years. I think it will continue to grow, and I think that whatever is good for Lexington will certainly be good for Lawrenceburg, my community. Certainly if it is good for my community, it is good for my bank.

Q. Do these tie-ins of economy that you speak of mean that there is also a flow of checks back and forth between these communities, Lawrenceburg and Lexington?

A. More so all the time, and I think they will increase.

Q. Would that make it any more desirable from your standpoint that those checks you receive on Lexington banks be cleared directly with a Lexington bank?

A. Yes.

Q. Of what importance to you is promptness in the matter of clearing checks?

A. It is growing very important right now, and will continue to be important. A customer deposits a check with us, and naturally he is interested in knowing whether the check is good or not. Certainly we are. The quicker we can get that item or check cleared, the better it is for us and the better it is for our customer.

Q. Does the merged bank, by reason of its increased capital structure and the increased lending limit, based [669] upon your experience and your opinion, have any reasonable chance of success of acquiring additional correspondent bank balances by reason of its geographical location, if it furnishes the service necessary?

A. If it furnishes the proper service, yes.

Q. Does your bank have correspondent bank balances now with banks other than the Federal Reserve in Louisville, Mr. Routt?

A. Yes.

Q. Where else does it have an account?

A. We have a correspondent in Louisville, Lexington, Cincinnati, and Chicago.

Mr. HARVILLE. You may ask.

Cross-examination by Mr. WILLIAMS:

Q. With what bank in Lexington do you have correspondent relationships?

A. First Security.

Mr. WILLIAMS. That is all.

Mr. HARVILLE. That is all.

The COURT. You are excused.

(Witness was excused.)

Mr. ODEAR. Mr. W. T. Forsee.

[670] Whereupon, W. T. FORSEE was called as a witness and, after having been first duly sworn, was examined and testified as follows:

The CLERK. The witness, your Honor, is W. T. Forsee.

Direct examination by Mr. ODEAR:

Q. Mr. Forsee, where do you live, sir?

A. Owenton, Kentucky.

Q. Are you in the banking business?

A. Yes, sir.

Q. What bank are you with and what position do you have with that bank?

A. First National, of which I am president.

Q. How long have you been with the First National Bank there?

A. Something over forty-nine years.

Q. You have been actively engaged in banking for that period of time?

A. Fifty years come April—yes, sir.

Q. Is your bank a member of the Federal Reserve System?

A. Yes, sir.

Q. Is it a national bank?

A. Yes.

[671] Q. And it is, of course, insured by the FDIC?

A. Yes.

Q. You are a member of the same Federal Reserve District as Lexington, are you not?

A. I am in the Eighth District.

Q. And we are in the Fourth. Does your bank maintain a correspondent relationship with other banks located in larger cities?

A. Yes. We have accounts in Louisville and one in Cincinnati.

Q. You just maintain two, do you?

A. No; I have three accounts in Louisville.

Q. Three accounts in Louisville, but just in two cities?

A. Yes.

Q. In determining the location of a city bank for a correspondent, you believe, do you, that you should maintain more than one correspondent bank account?

A. Yes.

Q. You think that is sound banking?

A. I do that anyway.

Q. Do you do it because you think it is sound banking to do so?

A. I would say yes.

Q. In choosing one of your correspondent banks, is it [672] necessary, do you think—based on your experience—that that bank be in a city where there is a member or branch bank of the Federal Reserve System?

A. No, not necessarily.

Q. Why do you maintain correspondent bank balances with other banks?

A. Well, of course we are just like the individual. We feel that we want it scattered about, of course, due to the protection of the capital structure.

Mr. SPAETH. I can't hear him, your Honor.

The COURT. Speak a little louder, please. He said he wants it scattered about a little.

By Mr. ODEAR:

Q. Do you get any services of any kind from your correspondent banks?

A. Oh, yes.

Q. What services briefly do you get from them?

A. Well, of course that is where we clear all of our correspondence, and so forth; and then we get loans and different

things. We depend upon our correspondent banks for information in regard to bond markets and so forth.

Q. Are you familiar with the change that has taken place in the capital structure and the lending limits of the largest bank in Lexington by reason of this merger?

[673] A. Yes.

Q. Tell the Court whether or not, based on your experience, the merged bank in Lexington would be able to give services to correspondent banks generally located in your area which the old First National Bank could not have given.

A. Well, of course, due to the enlarged institution, it is just in position to give more service in my estimation.

Q. What about in the field of loan participation? Is that particularly true there?

A. That is one of the services, yes.

Q. Mr. Forsee, if the Court should permit this merger to become permanent and to stand, and thereafter the First Security National Bank and Trust Company of Lexington should increase its service for correspondent banks, based on your experience do you believe that they would be able to obtain substantial additional correspondent bank business in your area?

A. I don't think there is any question about it.

Q. Mr. Forsee, your city and the City of Lexington are in the same general geographic area, are they not?

A. Yes. We claim the Bluegrass.

Q. In recent years has the economic tie-in become more or less close between your community and the community here in Lexington?

A. Oh, it has increased very much.

[674] Q. By reason of that fact, do you think that there might be any advantage for a bank in Lexington such as the First Security National Bank and Trust Company over a bank in Louisville or Cincinnati in competing for correspondent bank business in your area?

A. Yes. Particularly in our clearing of items, checks and so forth, being a large tobacco market, where I expect two-thirds of our tobacco crop is marketed—also livestock. It is quite a livestock center.

Q. If the correspondent bank services of First Security were improved after this case is over, and if the merger becomes permanent by the installation of overnight banking services and matters of that kind, would that be important to banks in your area in the clearing of checks?

A. Yes, sir, very much so.

Q. Do your correspondent banks give you any services in the field of advise on various matters such as investments, securities, and operations, and matters of that kind?

A. Yes.

Q. Do you on occasion feel that is advantageous to you to go to the city where your correspondent bank is located and to have personal conversations in obtaining such advice?

A. I usually always do, yes, sir.

Q. Would the geographic location of Lexington offer any [675] advantage to banks in your area over Louisville or Cincinnati banks in that regard in the obtaining of correspondent bank business?

A. Yes, they are a little closer to us.

Q. Would that make a difference to you, do you think?

A. Yes, sir.

Mr. ODEAR. You may ask him.

Cross-examination by Mr. SPAETH:

Q. Do you have a correspondent account presently with First Security?

A. Yes.

Q. What is the amount of that account?

A. I believe about $84,000, if I remember correctly.

Q. What service does First Security render to you, sir?

A. They are varied, I would say. Of course they clear my items I send them rather promptly, due to their location; and the items I send them are in this locality, which up until just recently, when we got to corresponding with them, we had to route them through Cincinnati, which delayed the clearing from one to two days.

Q. They presently clear your checks. Is that correct?

A. Yes, they clear whatever I send them.

Q. How long have you had that account with First [676] Security?

A. I believe now about five years, something like that—four to five years.

Q. During that period——

A. It was with First; of course it was with First Security since they have been together.

Q. I see. Prior to that it was, of course, with First National?

A. Yes.

Q. During that entire period were they clearing your checks?

A. Yes.

Q. They were giving you prompt service on those checks?

A. Yes, sir.

Q. Any change as a result of the merger?

A. Well, nothing especially, I would say. It has been a very short time.

Mr. SPAETH. No further questions.

Mr. ODEAR. Thank you, Mr. Forsee.

(Witness was excused.)

Mr. ODEAR. May it please the Court: We have taken numerous depositions in the preparation for this case, and there are two depositions which we consider highly important which we would like to read to the Court and have put in [677] evidence.

Except for those two depositions, these are all the witnesses which we have been able to get here this soon. I think the depositions will take up a large part of the remainder of the afternoon.

Monday we will be able to have our other witnesses here who are coming from out of town and be able to proceed.

The COURT. Go right on with your deposition.

Mr. ODEAR. Thank you, sir.

Mr. WILLIAMS. Could you tell us which deposition you are going to read, please?

Mr. DAVIS. This is Sam I. Yarnell.

Mr. WILLIAMS. Your Honor, could we have a minute or two to go get our copies so we could follow the reading, please?

The COURT. Yes.

Mr. MITCHELL. What is the other one you are going to read, so we can get that at the same time?

Mr. DAVIS. Mr. Willard Hurley.

[678] (The following is the deposition of Sam I. Yarnell, taken at Chattanooga, Tennessee, February 9, 1962, before the following attorneys: Melvin Spaeth, Esq., and Lawrence F. Noble, Esq., for the Plaintiff; Gladney Harville, Esq. and John L. Davis, Esq., for the Defendants:)

SAM I. YARNELL, a witness called at the instance of the defendants, being first duly sworn, was examined and deposed as follows:

Direct examination by Mr. HARVILLE:

Q. State your name, please, sir.

A. Sam I. Yarnell.

Q. Where do you live, Mr. Yarnell?

A. Chattanooga, Tennessee.

Q. What is your present position, sir?

A. I am president of the American National Bank and Trust Company of Chattanooga.

Q. How long have you held that position, Mr. Yarnell?

A. Since July of 1957.

Q. Prior to that what was your position or occupation, please, sir?

A. I was assistant to the president of the same bank.

Q. How long did you hold that position, Mr. Yarnell?

[679] A. Nine months.

Q. And prior to that, were you with the same bank?

A. Yes.

Q. What capacity were you in then, please, sir?

A. I was assistant cashier from 1946 to 1948, assistant vice president from 1948 to 1950, vice president from 1950 to 1956.

Q. At which time you became assistant to the president; is that right?

A. Then I was assistant to the president from December 1956 to July 1957.

Q. Has all of your banking experience been with the American National Bank in Chattanooga?

A. Yes.

Q. What is your educational background, Mr. Yarnell?

A. I was educated in the city schools of Chattanooga, Vanderbilt University, graduating with a B.A. Degree, graduate

school of Banking of Rutgers University, being awarded a certificate, that is, correspondence work primarily.

Q. Do you hold or have you held any offices or positions in banking organizations or societies?

A. I am at present Vice President of the ABA for the State of Tennessee.

Q. What is that "ABA", please, sir?

[680] A. American Bankers Association.

Q. Have you held any other positions in any banks, societies, or organizations?

A. None other than committee appointments.

Q. When you came with the American National Bank in 1946, how many other commercial banks were there in Chattanooga?

A. There were three.

Q. Would you name them, please?

A. The Hamilton National Bank, the Pioneer Bank, the St. Elmo Bank and Trust Company.

Q. What are the banking laws as to the establishment of branches in the State of Tennessee, sir?

A. I would have to answer insofar as national banking regulations are concerned. I have had no experience in the establishment of a branch.

Q. By the state?

A. By the state banks. Application must be made to the Comptroller of the Currency, from whom tentative approval is obtained and investigation is then made by the Comptroller's office. The other banks are canvassed. The other financial institutions are canvassed, including savings and loan associations. Then a permit is issued to establish the branch at a specific location on a specific [681] date.

Q. If it is approved?

A. If it is approved.

Q. What is the geographical or territorial limits within which you may establish branches?

A. In Tennessee we may branch only in the county we are domiciled in.

Q. What is the present population of the county that Chattanooga is in now, please, sir, roughly?

A. I do not know. I think it is in the neighborhood of 250,000 people.

Q. What is the present population of Chattanooga approximately?

A. Estimating, a hundred and eighty thousand. I do not know again precisely.

Q. When you became associated with the American in 1946 what was the largest commercial bank in town?

A. The Hamilton National Bank.

Q. What was the second largest commercial bank at that time?

A. The American Trust and Banking Company which was our predecessor under a state charter.

Q. What is the largest bank in town now in terms of total resources?

[682] A. The Hamilton National Bank.

Q. Is your bank still the second largest?

A. Yes.

Q. I show you here a table, Mr. Yarnell, purporting to be a table of the total resources of the Hamilton National Bank, the American National Bank and the Pioneer National Bank from 1945 through 1960 showing the dollar volume held by each bank and the percentage of the total resources of all banks that each bank held by years, and I will ask you if you have checked this for the years 1949 through 1960, please, sir?

A. Yes, I have.

Q. Is that correct for those years?

A. It is correct.

Q. This chart shows, does it not, that as of 1949 the Hamilton had $132,444,000 in total resources which represented 62.3 percent of the total resources of those three banks as of that time?

A. Yes.

Q. As of the end of 1960, what does it show that the same bank held in terms of dollar volume and percentage of the total resources of all commercial banks in Chattanooga?

A. They held $192,494,000, or 53.1 percent.

[683] Q. So that their drop in that 10 to 11-year period was approximately in terms of percentages how much?

A. It is approximately 8½ percent.

No, I beg your pardon. It is as a percentage of the total 8½ percent.

Q. As of 1949, what does that table show with reference to your own bank as to the dollar volume and percentage of the total of those three banks?

A. At the end of 1949, our resources were $65,928,000, representing 31 percent of the resources held by Hamilton County banks.

Q. As of the end of 1960, what does it show for your bank in terms of percentage?

A. In 1960, we held $125,767,000, or 34.7 percent.

Q. So, in terms of growth, both as to dollar volume and percentage of the total of those three, what were your gains during those 11 years?

A. Our dollar volume gain?

Q. Roughly doubled?

A. Was approximately 60 million and our percentage of the total increased 3.7 percent.

Q. Would you look at the same year and the same figures for Pioneer and give us the dollar volume as of the end of 1949, percentage of the total?

[684] A. At the end of 1949, Pioneer held resources of $14,142,000, representing 6.7 percent of total resources. At the end of 1960, they held $44,066,000, representing 12.2 percent of the resources.

Q. Now, during that period of 11 years, did the Hamilton National Bank acquire any of its growth by merger or consolidation?

A. The Hamilton National Bank merged in 1959 with the Ridgedale Bank and Trust Company and acquired 10½ million of deposits.

Q. During the same period of time, did your bank acquire any of the growth represented on that chart by consolidation or merger?

A. May I refer to my notes for the date of the merger with the St. Elmo Bank and Trust Company?

Q. Sure.

A. I think that was in 1948. I should have brought those things in here. I do not have that date. We merged with the St. Elmo Bank and Trust Company either late in 1948 or early in 1949.

Q. All right, sir.

A. Other than that, there have been no mergers.

Q. There is no merger, then, represented by the Pioneer's growth as shown on that chart?

[685] A. No.

Q. Would you introduce the table headed "Total Resources—Page 1" for Chattanooga, Tennessee into evidence and mark it Yarnell 1 until it is marked otherwise by the Court, as an exhibit to your testimony?

A. Yes.

Mr. DAVIS. We offer that document in evidence.

The COURT. Is it attached to the deposition?

Mr. DAVIS. Yes, sir.

The COURT. It is in.

Mr. DAVIS. All right.

I might point out, your Honor, that there was an objection made to the introduction of that document at the time the deposition was taken. I don't know whether it is being renewed now or not.

Shall I go ahead, Mr. Spaeth?

Mr. SPAETH. Might I just look at this a moment, Mr. Davis?

I believe on pages 9 and 10 it is stated, Mr. Davis, that we had no objection to it at that time.

The COURT. Move along.

Mr. DAVIS. All right, sir.

[686] Mr. DAVIS. On page 10:

By Mr. HARVILLE:

Q. Mr. Yarnell, I show you a document headed "Page 2—Deposits", with "Chattanooga, Tennessee" at the top. And I will ask you if you have had an opportunity to check the figures shown on this document for the years 1949 to date?

A. Yes.

Q. I believe that you have indicated some changes on that document, have you not?

A. Yes. There were three corrections necessary in the Pioneer's amounts for the years 1947, 1949 and 1960.

Mr. SPAETH. I hate to interrupt, your Honor, but I find that I was in error. I find that I had objected on the ground of irrelevancy of that document. I do reiterate that objection.

The COURT. Very well. It will be overruled on that ground.

By Mr. HARVILLE:

Q. Would you explain the changes that you have made in the figures on this document and the reasons for it, Mr. Yarnell?

[687] A. These figures for eight of the twelve years reflect a consolidated figure for Pioneer's deposit accounts and a category known as "Deposits Held as Collateral to Secure Loans." This was a practice followed by the Morris Plan and the Pioneer has continued this practice since becoming independent. If the other eight years are to be shown consolidated, these three years should be consolidated. Therefore, those amounts as added there, $2,239,000 in 1957, $2,909,000 in 1959, and $3,450,000 in 1960, are the amounts which Moody's left out of the consolidated figures and are the deposits held as collateral to secure loans.

Q. So that you have simply added the deposits held to secure loans for those three years to make it conform to the other years in which they were added?

A. That is correct.

Q. What does this table show as to the dollar volume and percentage of the total held by the Hamilton as of 1949, please sir?

A. The Hamilton held deposits of $124,836,000, representing 62.9 percent.

Q. What was the same figures for the same bank as of the end of 1960?

[688] A. $176,387,000, representing 54.2 percent of the deposits held by the three banks.

Q. What was the drop in the percentage of all deposits held by that bank during those 11 years?

A. A decrease of 8.7 percent.

Q. Give us the figures of your bank, please, sir, for the period 1949 as to the total resources and percentage of total.

A. Deposits at the end of 1949 were $61,193,000, representing 30.8 percent of the deposits of the three banks. At the end of 1960, they were $113,379,000, or 34.8 percent of deposits.

Q. Give us the same thing, if you will, please, sir, for the Pioneer Bank as of 1949.

A. As of 1949, the Pioneer held deposits of $12,572,000, which was 6.3 percent.

Q. And the same figures, if you will, for the end of 1960?

A. At the end of 1960, the Pioneer held $39,024,000.

Q. Representing what percentage?

A. Off the record, that percentage would have to be figures. Is it all right?

Q. Yes, I see.

A. That percentage will have to be refigured.

[689] Q. But if it were refigured, the percentage would be higher than the 10.9 shown on this chart; is that right?

A. Yes.

Q. Will you file that table with your testimony and make it a part thereof, numbering it temporarily Yarnell No. 2, please, sir?

A. I do.

Mr. DAVIS. The admission of the document into evidence, if your Honor please, was objected to on the ground of relevancy.

Mr. SPAETH. I make the same objection now, your Honor.

The COURT. You don't care to be heard any further on it?

Mr. SPAETH. No, sir.

The COURT. Overruled.

Mr. DAVIS. There was some examination of the witness at this point by Mr. Spaeth. Did you care to read your interrogation, Mr. Spaeth?

Mr. SPAETH. Why don't you just continue?

Mr. DAVIS. Do you want that in the record, your interrogation?

Mr. SPAETH. Yes.

[690] Mr. DAVIS. Suppose you read it so we won't get confused.

Mr. SPAETH. I would also like to point out that for the three years stated all of the percentages are to some degree inaccurate.

The WITNESS. That is correct.

Mr. SPAETH. And again I take it that this just includes the deposits of these three banks?

The WITNESS. That is correct.

Mr. SPAETH. And the percentage figures are percentages of the totals of these three banks?

The WITNESS. That is correct.

Mr. SPAETH. May I ask you further, sir, about the deposits of the Pioneer Bank? I am not quite sure I understand what these deposits are to secure, installment loans. I wonder if you would explain that further.

The WITNESS. A loan is made against which an account is established. As payments are made those funds are deposited in that account. When the maturity is reached the amount represented in the account is sufficient to liquidate the loan.

Mr. SPAETH. And at that time the loan is liquidated and the deposit eliminated?

[691] The WITNESS. That is correct.

Mr. SPAETH. The borrower cannot withdraw that amount?

The WITNESS. No.

Mr. SPAETH. It is simply a loan repayment form?

The WITNESS. That is correct.

Mr. SPAETH. All right.

Mr. DAVIS. At this point the direct examination resumed.

By Mr. HARVILLE:

Q. Mr. Yarnell, I show you another chart headed "Chattanooga, Tennessee—Page 3—Loans", which purports to show the loans for the years indicated for the Hamilton, American, and Pioneer. I will ask you if you have had an opportunity to check the figures shown on that document for the years 1949 to 1960.

A. Yes.

Q. As to the dollar volume and percentage of total of the loans held by the Hamilton, what does that show as of 1949?

A. They held loans of $29,045,000, representing 56.7 percent of the loans of the three banks.

[692] Q. What does it show for the same bank for the year 1960?

A. 1960 they held $88,941,000 in loans, representing 53.4 percent.

Q. Please give us the dollar volume and percentage of the total of your bank as of the year-end 1949.

A. We held $13,731,000.

Q. And the percentage?

A. 26.8 percent.

Q. And give us the same information for the year-end 1960?

A. We held $53,759,000.

Q. And the percentage?

A. 32.3 percent.

Q. Give us the dollar volume and percentage for the Pioneer for the end of 1949, please, sir?

A. The Pioneer at the end of 1949 held $8,406,000, representing 16.4 percent. At the end of 1960, they held $23,827,000, representing 14.3 percent. Here again there is an error in 1955 loan total.

Q. Please explain and tell us how that error occurred, please, sir.

A. The chart reflects loans of $14,010,000.

Q. For which bank?

[693] A. For the Pioneer Bank. Here again the Pioneer's bookkeeping methods differ from the usual. Loans which are guaranteed either in whole or in part by the FHA or VA are carried in their cash total. They will show cash due from banks and loans guaranteed as a subtotal. Then they will show other loans and discounts.

A. The figures for these other ten years incorporate that amount guaranteed. This 1955 figure of $14,010,000 did not include $1,606,000 of guaranteed loans.

Q. Would you file the document that you have just testified from and make it a part of your testimony, marking it Yarnell No. 3 temporarily, please, sir?

A. I do.

Mr. DAVIS. At this point, if your Honor please, Mr. Spaeth examined the witness for the purpose of establishing an objection.

The COURT. All right. Mr. Spaeth.

Mr. SPAETH. I make the same objection I did there, your Honor.

The COURT. I will rule the same way.

Move along.

Mr. DAVIS. Page 17, the middle of the page:

[694] By Mr. HARVILLE:

Q. Mr. Yarnell, do the tables as to the deposits and loans also reflect to the extent that you have previously testified the acquisitions of either bank by merger or consolidation of Hamilton and the Ridgedale Bank.

It does reflect the acquisition by Hamilton of Ridgedale.

Q. And you are not sure about the St. Elmo?

A. As of 1959 and 1960.

Q. What is your opinion as a banker as to the degree of regulation that you as a national bank operate under?

A. We operate under very stringent regulations.

Q. Tell us, if you will, just a few of the more important regulations that affect you and the operation of your bank, please, sir.

A. Being a national bank, we are regulated by the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation, the State of Tennessee as pertains to usury laws, and others. We are regulated, as previously testified, in the areas in which we may operate.

Q. What about interest rates on demand deposits?

A. We are regulated against the payment of interest rates on demand deposits, the maximum rate for the payment of interest on time deposits is fixed, the reserves maintained [695] by banks are specified and set. Cash reserves, that is. Trust powers are regulated by the laws of the State.

Q. What are the main areas that this degree of regulation leaves within which you are permitted to compete with other commercial banks?

A. Excuse me. Read that back.

(Thereupon, the pending question was read by the court reporter.)

Q. First, let me ask you is service one of those areas in which you are permitted to compete with other commercial banks?

A. Services, we have no services that the other banks do not have.

Q. Is that an area within which you all do?

A. It is the only quality that you can compete in insofar as

service is concerned. We can compete with them in convenience. We can compete with them in aggressiveness. We can compete with them in the quality of our staff. We can compete in the efficiency of our methods.

Q. From your experience——

A. (Interposing) That is about it.

Q. From your experience in Chattanooga, has the size of a bank given any bank here a competitive advantage over another in competition in the areas that you have specified, [696] a substantial competitive advantage?

A. No.

Q. From your experience here, has the size of any institution given to that institution any power to exclude any other local bank from competing with it in any field or line of commercial banking that it chooses to compete in if it furnishes adequate service and provides qualified personnel to do it?

A. No.

Q. Has size alone, from your experience here, given any one bank the power to dictate the policies and practices and prices that other banks will follow in the operation of their bank?

A. No.

Q. Has size given to any one bank the power to cause customers of other local banks to leave those local banks and come to the bigger bank?

A. No.

Q. Does your bank offer trust department services, Mr. Yarnell?

A. Yes.

Q. When did it commence to offer trust services, it or its predecessor, let us say?

A. 1912.

[697] Q. When was your bank organized?

A. 1912.

Q. Was it a national or state bank?

A. It was a state bank.

Q. What was its main area of service at that time or business?

A. The American Trust and Banking Company was organized as a trust institution.

Q. Did it possess commercial banking powers?

A. It possessed commercial banking powers. However, the emphasis was placed on the trust phase of operations and the management were skilled in this new phase of banking services.

Q. So that your commercial department was largely maintained to compliment your trust business?

A. The commercial department was operated really as an adjunct for a good many years, not aggressively. The savings deposits were not taken, payroll accounts were not accepted, and the small depositor was not encouraged.

Q. How long did that continue to be the policy of this bank, Mr. Yarnell?

A. The beginning of the change was slightly before World War II, in 1941. The marked change occurred in 1945.

[698] Q. When did your bank become a national bank?

A. In 1948.

Q. Did that affect the operations of your bank in any way when you became a national bank?

A. Yes, it did.

Q. Tell us briefly how it affected you.

A. Our decision to nationalize was based on prestige. At the same time we gave up a great many advantages that we had had under the state banking system. National banks are restricted in their lending limits to 10 percent of their capital and surplus to any one borrower, as a state we enjoyed the opportunity of extending to any one borrower 15 percent of our capital, surplus and undivided profits, so that our nationalization, in effect, reduced our legal lending limit by more than 50 percent. We had at the time certain loans which exceeded our national limit and it was necessary that we go out and secure the help of our correspondent banks to take overflow loans.

Chattanooga is not a large loan market. We have difficulties employing our money and which gave us income in certain of our large lines that we could have used, however, it enabled us to diversify. That was the major effect of nationalization adversely.

Q. Let me deviate once again. When was the last merger or

consolidation or acquisition of your bank prior to the [699] St. Elmo Bank?

A. In 1941 we merged with the Commercial National Bank.

Q. After that merger was there any loss or attrition of business on the part of your bank?

A. Yes.

Q. From having operated a bank do you have any opinion as to the causes for attrition or loss of business?

A. Well, it's historically true that in most mergers you lose business, you will lose some business. An individual doing business with the then American Trust and Banking Company might not have liked the management that came in from the Commercial National Bank. The converse is true; a number of depositors of the Commercial National Bank left us at that time and moved to other banks. Some of that business has not been recaptured as yet.

There were relationships in both banks which, when consolidated, proved to be too large perhaps to be carried in any one bank or the need for a second bank existed and so the account was then divided and what was at the Commercial Bank maybe went somewhere else, so that such advantages as were realized were likewise minimized by some loss of business.

Q. There was an offsetting of those gains?

A. Yes, and that, I am sure, happened in the case of the Hamilton National Bank, judging from the figures as [700] published and from what I have seen in Chattanooga.

Q. Now, back to the trust department business of your bank. You say that the change from the emphasis entirely upon trust business occurred around 1945 or '46, at the end of the war?

A. Yes. In 1945 we had no branches. Today we have eight. We had a relatively insignificant installment loan department. We were still not a factor in the commercial banking business of Chattanooga. We had a number of very large accounts and the previous management had liked it that way.

Q. Let me ask you this: Does the Hamilton National Bank have a trust department now?

A. Yes.

Q. Do you recall when that was established?

A. No. They have had a trust department for many years.

For a great many years it existed in little more than name only. They did not give it emphasis. As we gave up by default the commercial banking business, they in turn demonstrated no interest in the trust business.

They have been extremely active in the trust business for the last six or eight years.

Q. When you entered the commercial field was there any change in the operations of the Hamilton National Bank insofar as the trust business was concerned?

[701] A. Not markedly at that time.

Q. When did they?

A. There was a change in their operations, in commercial banking business operations.

Q. When did the change as to their emphasis upon trust business begin to take place?

A. As I said, about six or eight years ago.

Q. Since that time have they aggressively sought the trust business?

A. Very. They went out and got them a very able attorney, a personable person, who heads their department now. They have added an investment service. They do a good tax job. Prior to that time they had two men who had just come out of their banking department who operated in the trust work.

Q. At the time the Hamilton started to aggressively seek trust business give us your best estimate as to the relative portion of the trust business that you held in your bank as compared with that that Hamilton held.

A. Well, of course, this is purely speculation. Trust assets are highly confidential with us, and the same is true with others in Chattanooga, and they are not published.

Q. In competing with them you have some idea as to the size?

A. I will be conservative, that in 1946 when I joined [702] the bank we held 80 percent of the trust accounts, which probably represented 90 percent of the dollars invloved. We held wills and will appointments in our bank of directors of the other banks at that time, which would not have taken place had an adequate service been provided by the other banks at that particular time.

Q. Since they have begun to aggressively seek the business has that situation changed?

A. Since they have begun to aggressively seeking it, it certainly has changed.

Q. What has been the nature of the change?

A. We no longer have any wills in our files of their directors, for one thing, and we are running into them increasingly in appointments. What the increase has been in their living trust business I do not know. However, there have been two or three large accounts moved from our bank to theirs because of the personal affiliation of the beneficiary or of the grantor with the Hamilton National Bank, and the same has been true of the Pioneer Bank,, which approximately three years ago opened their trust department. They, too, went out and got a good man and this past year added an investment man, who is well qualified.

We are beginning to see them named in wills, particularly in younger people's wills, because they are aggressively [703] soliciting in that area, but the trust business in Chattanooga is extremely competitive right now.

Q. From your experience in the trust field in Chattanooga did your bank, at the time it held roughly 80 per cent of the accounts and 90 per cent of the dollar volume of the trust business held by you two banks, have any power to exclude that bank from effectively competing with you if it chose to furnish the proper service and aggressively sought the business?

A. No.

Q. Did you have any power to dictate to that bank or to cause that bank to follow any policies or prices or charges that you fixed in the operation of your trust department?

A. No.

Q. Did you have any power to cause any customers of that bank to leave it or to bring their business to your bank by reason of the size of your trust department at that time?

A. Only in the quality of our service, was what we preached to prospective trust customers.

Q. Is the quality of service something that——

A. (Interposing) Because our size in the trust department was not even known.

Q. Is the quality of service a matter that anyone with the ability and the aggressiveness can furnish, if he is so [704] inclined?

A. Yes.

Q. Do these conclusions that you have just stated also apply as to Pioneer entering the trust field?

A. (Witness moves head up and down.)

Q. Does your bank now operate a correspondent bank department, Mr. Yarnell?

A. Yes.

Q. Tell us, if you will, as of the end of 1961 the approximate dollar volume of the deposits that you held from country banks in correspondent bank deposits.

A. At the end of 1961?

Q. Please, sir, or do you have that?

A. Twelve million four hundred seventy-two thousand dollars.

Q. Tell us, please, sir, the amount of those deposits that you held as of June 30, 1959, roughly.

A. June 30, 1959?

Q. Yes.

A. The call by the Comptroller in June was as of June 10th.

Q. Excuse me.

A. Deposits of banks at June 10, 1959, $3,371,000.

Q. When did your bank commence to aggressively seek [705] correspondent bank deposits; Mr. Yarnell?

A. Well, we talked about it for several years. We aggressively started in 1960.

Q. At the time you aggressively started to seek these deposits in 1960, tell us the nature of the competition that existed for you in that field at that time, if you will, please, sir, from all sources.

A. Well, the first and main competitor, naturally, was under our nose. The Hamilton National Bank had devoted many years to the establishment of this business, not only in the immediate area but wide-reaching. In the immediate area they, through their Hamilton National Associates, a holding company.

Q. What is the nature of this holding company you speak of?

A. This holding company owns shares in various banks in East Tennessee and North Georgia.

Q. How many of those banks are there, roughly?

A. Hamilton National Bank of Chattanooga, Hamilton National Bank of Knoxville, Hamilton National Bank of Morristown, Hamilton National Bank of Johnson City, Bank of Spring City, First National Bank of Lafayette, Georgia, Hardwick Bank, Dalton, Georgia, First National Bank, Lenoir City, Tennessee. That's eight, isn't it?

Q. At that time were there any banks in Nashville [706] actively soliciting correspondent bank business in the area?

A. Well, the most active bank in Nashville is the Federal Reserve Bank, when you come right down to competitiveness.

Q. Were they?

A. They were naturally in existence and the Nashville banks were, all three or four—well, at that time there were three active.

Q. In soliciting corresponding banks?

A. In correspondent bank business. In Knoxville there were two.

Q. What were those two in Knoxville?

A. Hamilton National Bank of Knoxville and the Park National Bank.

Q. All right, sir.

A. In Atlanta all of the banks. In Birmingham there were two. So that we, being in the center and no more than 150 miles from any of these cities, had it in our mind that we couldn't compete geographically, we would say.

We've got the mountains to the east. You can't get over into North Carolina to Murphy and points like that. The Nashville banks, the Atlanta banks, the Birmingham banks had the Fed so that they can just get their clearing done for them. But [707] sitting in our midst was a bank that was a contradiction of just what we were believing.

Now, our thought about the Hamilton National Bank was, "Look, they have got the volume; they operate around the clock; we can't afford it, we can't afford it. It's a vicious cycle.

We don't have the volume necessary for a full around-the-clock transit service. We can't establish the transit service without the volume."

Finally, in 1960, with the quality of the two men who were assigned to the correspondent bank business and top management in John Wright, the assistant to the president, spearheaded it. We established a night transit service, which was basically that in name only. Then he and his associate began to beat the bushes. We found some very startling facts.

Q. What did you find?

A. That we could clear a check in Murfreesboro, Tennessee, which was 25 miles from Nashville, before one of the Nashville banks could.

Q. How far is it?

A. They were putting all of their clearings, out of town clearings, in the Fed. When they did that they had to have those clearings there by two o'clock. Now, it's a physical impossibility to get all of your business through by two [708] o'clock and into the Federal Reserve Bank. Those items that did not reach the Fed by two o'clock were held over until the next day. A bank in Nashville or Knoxville could send us a check, a bank in Nashville, let's use that, a bank in Nashville could send us a check at five o'clock in the afternoon on the bus, be processed here some time around midnight, back out on an early morning train or bus and be in Murfreesboro at the opening of that bank at nine o'clock the next morning. The same was true in Knoxville.

None of the Knoxville banks rendered a night transit service. We found that one of our best accounts today is a Knoxville bank which had been clearing through its neighbor.

Q. You all are——

A. (Interposing) The same is true of Birmingham. We have a good account in Birmingham because the service, the only bank rendering the full service was the Hamilton National Bank, they taught us, they taught us this thing and I attribute that to the providing of a full service and the aggressive quality of these men that were out with that well over a hundred per cent increase in two years' time.

Q. So that with aggressiveness and quality of service you have been able to——

A. (Interposing) Yes, and we have confined our sphere of operation to no more than 150 miles to provide that 12 million [709] dollars. Now, don't say that is going to continue because next year I hope we can go out still farther because the Hamilton National Bank has been able to at the expense of the other banks and we are growing in it.

Q. Do you have there the figures?

A. It has been a most interesting challenge—I would like to put that in there—and a most gratifying experience to me to accomplish something that we have all felt was impossible for so long.

Q. Do you have there the figures for the Hamilton National Bank's correspondent balances in 1960, at the end of 1959?

A. At the end of 1959.

Q. Well, that would have been just prior to the time you aggressively started after this business, would it not?

A. Hamilton National Bank, at the close of business, December 31, 1959, deposits of banks, $47,824,000.

Q. Within a radius of say 100 to 150 miles of Chattanooga here, compare the quality of service that you are able to render to correspondent banks as compared with that that they are able to receive through the Federal Reserve.

A. We can give as good or better service than any bank within a 150-mile radius, not only in the matter of clearing checks but in loan participations, bond portfolio analysis, trust consultation.

[710] Q. I take it from what you have testified to that promptness and efficiency is one of the prime qualities that are looked for in clearing checks and collections?

A. That is true.

Q. Have you acquired many of the investment portfolios of the banks that you serve in a correspondent capacity during this period of time?

A. We do not want to acquire their portfolios. We will be happy to consult with them, and do so at all times. We will not make their investments for them.

Q. From your experience in Chattanooga during the period when there have been only three banks here, has the community suffered from any lack of proper banking service by reason of the fact that there were only three in a town this size?

A. No, this is the most overbranched city from a convenience standpoint in the Sixth Federal Reserve District, if my figures that I have done are correct in times past.

Q. Still you only have three unit banks?

A. That's right, we only have three unit banks.

Q. And the three alternative banks includes those the customers have here?

A. That's right.

Q. Have they, in your opinion, caused any ill effects from the public being adequately served by banks?

[711] A. No, not to my knowledge.

Q. Now, Mr. Yarnell, have you examined various tables, charts and graphs and what-not that we have furnished in connection with the banking situation as it exists in Lexington today?

A. Yes.

Q. Those charts and tables generally reflect that following the consolidation the First Security holds or held immediately after the consolidation roughly 52 or 53 percent of the deposits, roughly 52 or 53 percent of the total resources and roughly 54 percent of the total loans that all commercial banks in Fayette County held.

Does the size of the First Security, from your experience and your opinion, standing alone give it the power to exclude any of the four other local commercial banks from effectively competing with it if they aggressively seek the business and provide the quality of service necessary to get it?

Mr. SPAETH. I made an objection at that point, your Honor, on the ground that the question did not lay a proper foundation for that answer, because there was no point at which they asked the witness what his experience was in Lexington or whether he had any familiarity with Lexington.

I renew the objection at this time.

The COURT. He is speaking as an expert. I will [712] overrule the objection. Go ahead.

Q. (By Mr. Harville) Would you proceed?

A. Beg your pardon?

Q. Would you proceed or do you understand the question or would you like for him to read it back to you?

A. No, I was just listening to his objection, that was all.

Q. Oh.

A. No, I do not. In fact, the First Security can be a prime target for those banks.

Q. Those figures and charts show that since the consolidation, as of March 1, 1961, First Security, in competition with those four other local banks, has lost anywhere from one to one and a half percent of the total of all deposits, resources and what-not that it held at the time of the consolidation. Is that of any surprise to you?

A. No.

Q. Would that be normally expected to follow?

A. Well, I have already said that historically it generally follows that there is attrition following a merger.

Q. The figures and charts shown to you reflect that the merged bank held at the time, or just prior to the consolidation, roughly 78 or 79 percent of the trust accounts and [713] roughly 92½ percent or 93, perhaps, of the total dollar volume of the trust accounts held by all commercial banks in Fayette County.

Do those figures, and the size, relative size, of the trust department of the First National Bank—First Security National Bank, in your opinion, and based upon your experience, give it the power to exclude any of the other banks from competing with it in securing trust business if they furnish proper service and aggressively seek the business?

Mr. SPAETH. At that point I made the same objection, your Honor.

The COURT. Overruled.

A. I am trying to verify those figures. I do not recall having seen this chart, this particular one. Let me look at it, please.

Q. All right, sir.

A. The First National Bank and Trust Company and the Security Trust Company are now the merged institution?

Q. Right.

A. Am I correct in that?

Q. Right.

A. Now, may I have the question?

[714] (Thereupon, the pending question was read by the court reporter.)

A. From my experience, no.

Q. From the size alone of either the commercial department or the trust department of First Security, does it, in your opinion, and from your experience, have the power to require any other local banks to follow the practices, policies or prices that it may desire to impose upon them in the operation of any phase of their banking business?

Mr. DAVIS. Whereupon Mr. Spaeth objected.

The COURT. The same objection, I understand. The same ruling.

A. Size is no criterion for applying competitive pressure. The smaller banks could conceivably bring about a situation that would, from a competitive standpoint, cause a larger bank to adopt different charges or payments.

Q. Do you have there with you the charts and tables that you have examined in connection with the Lexington situation, Mr. Yarnell?

A. Yes.

Q. Would you just read the titles of those charts into the record, please, sir, that you have examined?

[715] A. "Chart showing total assets of each Lexington bank and percentage of total assets of all Lexington banks held by each bank from 1928 through 1960."

"Survey of probate records of Fayette County Court as to number of court appointments and dollar volume of estates at $10,000 or more that were administered by banks and individuals each year, together with percentages as to each of the years 1940 through 1961."

"Table showing dollar volume and percentage of total dollar volume of loans for purchasing or carrying securities held by commercial banks in Fayette County as of December 31, 1960."

"Number and percentage of total loans by size of loans out-

standing of Citizens Union Bank and Trust Company as of September 19, 1961."

"Table showing dollar volume and percentage of total dollar volume of loans to individuals to purchase other retail consumer goods on installment basis held by commercial banks as of December 31, 1960."

"Number and percentage of total loans by size of loans outstanding during 1960 of two banks."

"Table showing dollar volume and percentage of total dollar volume of loans to individuals to purchase private automobiles held by commercial banks and other lending agencies [716] in Fayette County, Kentucky, as of December 31, 1960."

"Table showing dollar volume and percentage of total dollar volume of loans to individuals for household, family, and other personal purposes held by commercial banks in Fayette County, Kentucky, as of December 31, 1960."

"Table showing dollar volume and percentage of total dollar volume of real estate loans secured by mortgages on residences and insured by FHA or VA held by commercial banks and other lending agencies in Fayette County, Kentucky, as of December 31, 1960."

"Table showing dollar volume and percentage of total dollar volume of loans to farmers, secured and unsecured except loans secured by real estate held by commercial banks and other lending agencies in Fayette County, Kentucky, as of December 31, 1960."

"Table showing dollar volume and percentage of total dollar volume of real estate loans secured by mortgages on farms held by commercial banks and other lending agencies in Fayette County, Kentucky, as of December 31, 1960."

"Table showing dollar volume and percentage of total dollar volume of real estate loans secured by mortgages on residences (both insured and uninsured by FHA or VA) held by commercial banks and other lending agencies in Fayette County, Kentucky, as of December 31, 1960."

[717] "Alternative sources for unsecured loans from commercial banks located in Fayette County, Kentucky, as of 6/30/61 according to legal lending limits."

"Alternative sources for unsecured loans from commercial

banks located in Fayette County, Kentucky, as of 12/31/60 according to legal lending limits."

"Table showing dollar value of time and saving accounts of Lexington banks and other competing institutions and percentage of total held by each as of 12/31/60 unless otherwise indicated." "List of credit unions and dollar value of savings held by each."

"Percent of local deposits held by each Lexington bank at year end 1935–1960."

"Percent of local bank loans made by each Lexington bank at year end 1935–1960."

"Share of local deposits held by the First National and Security Trust and their combined share at year end 1935–1960."

"Share of local bank loans made by First National and Security Trust and their combined share at year end 1935–1960."

"Share of total local bank loans made by Citizens Bank and Union Bank before consolidation, Citizens Union Bank after consolidation. At year end 1935–1960."

"Share of total local deposits held by Citizens Bank [718] and Union Bank before consolidation, Citizens Union Bank after consolidation. At year end 1935–1960."

"Share of local deposits held by First National Bank and by Security Trust Company and their combined share at year end 1935–1960."

"Share of local bank loans made by First National Bank and by Security Trust Company and their combined share at year end 1935–1960."

"Loans made by each Lexington bank and percent of total Lexington bank loans made by each bank at year end 1935–1960."

"Table showing growth in total assets of all Lexington banks in dollar volume and percentage growth from December 31, 1945, to December 31, 1960."

"Table showing growth in total deposits of all Lexington banks in dollar volume and percentage growth from December 31, 1935, to December 31, 1960."

"Table showing growth in total loans of all Lexington banks in dollar volume and percentage growth from December 31, 1945, to December 31, 1960."

"Total deposits held by all Lexington banks, December 31, 1935–1960."

"Comparison of dollar amounts and percentages of all Lexington banks per published statements for years ended [719] December 31, 1960, and 1961."

"Comparison of loans, deposits and capital of all Lexington banks on year end dates with ratios."

"Table showing dollar value of time and savings deposits of Lexington banks and savings accounts of Lexington building and savings and loan associations as of 6/30/61 and percentage of total held by each."

"Number of banking offices in Fayette County, Kentucky."

"Table showing dollar volume and percentage of chattel mortgage loans of each listed lending agency for the year July 1, 1959, to June 30, 1960."

"Table showing dollar volume and percentage of real estate mortgage loans of each listed lending agency for the year June 1, 1960, to May 31, 1961."

Mr. SPARTH. Your Honor, I am sure Mr. Davis will agree that at this time this did not by any means include all of the documents that have——

The COURT. It included such as he identified by reading the titles. That is all. They are in the record.

Q. (By Mr. Harville) Mr. Yarnell, are the opinions you have expressed as to the effect on competition of the consolidation of the two banks in Lexington based upon the facts [720] as disclosed to you in the charts and tables that you have examined and your experience in banking in Chattanooga?

A. Yes.

Mr. SPARTH. At that point, your Honor, I objected because I thought that his prior answers showed on what he had based those answers.

The COURT. Let me catch up. What is the question?

Mr. DAVIS. The last question on the bottom of page 41, if your Honor please.

The COURT. Unfortunately these pages are not numbered at the bottom and I can't tell anything about the page numbers.

Mr. LISLE. They are numbered in the top right-hand corner.

The COURT. I can't see the top-right-hand corner. Did you want to say something?

Mr. SPAETH. At that point Mr. Harville was referring to several prior questions to the witness. He was asking him at this point whether his prior answers were based upon the documents just read into the record; and I had objected on the ground that the prior answers showed on what the witness had based his answer.

I renew that objection.

The COURT. I overrule the objection.

[721] Mr. DAVIS. If your Honor please, at this point the several documents referred to by Mr. Yarnell were filed with the deposition solely for the purpose of identification. They had been otherwise introduced in evidence.

Q. (By Mr. Harville) Mr. Yarnell, in your experience in Chattanooga, in your endeavor to acquire certain deposits from local customers over the years, has the fact that the Hamilton National Bank held a substantial volume of correspondent bank deposits given it any substantial competitive advantage over you or the Pioneer Bank in securing these local deposits?

The COURT. What page is that on?

Mr. DAVIS. The middle of page 42, if your Honor, please.

The COURT. All right.

[722] A. The competitive advantage which it has had through a large correspondent bank department is that the banks with which it has done business refer business to it and vice versa. The other banks not affiliated either through holding company ownership or through a correspondent relationship do not send to the Hamilton National Bank, regardless of whether they know us or not, so that we have gotten business referrals of people moving into Chattanooga while at the same time they have gotten some.

We have had a sphere of influence which we didn't even know about. The truth of the matter is because of a reluctance to send something to the Hamilton National Bank on the part of a competitor bank in a small city or in a large city, for that matter.

Q. I show you——

A. I would say that the advantages and disadvantages have outweighed each other. I think the balance has existed there.

Q. Just about offset each other?

A. Yes, I think so.

Q. I show you here a chart——

A. The larger banks in this area would not send business to them, because they are in competition with them. We get referrals from all of the banks in Nashville and [723] most of them in Atlanta.

Q. I will ask you, please, sir, what that chart shows if you can tell us, please, sir?

A. This chart shows the deposits held by Chattanooga banks, the three present Chattanooga banks, the Hamilton, the American, and the Pioneer, for the years 1949 through 1960 of demand deposits of individuals, partnerships, and corporations, and of time deposits.

This excludes correspondent bank balances and deposits of states and municipal subdivisions.

Q. Based upon the figures reflected in that chart, then, has the fact that Hamilton has had a substantial volume of correspondent bank deposits given it any substantial competitive advantage over you in the securing of demand and time IPC deposits?

A. No.

Q. Would you file that chart there with your evidence and make it a part of it, marking it 4?

A. With the corrections?

Mr. DAVIS. We desire to introduce it into evidence.

By Mr. HARVILLE:

Q. You have checked the figures shown on the exhibit, [724] which has been introduced and marked 4, Mr. Yarnell?

A. Yes.

Q. You have made some changes on there?

A. Yes.

Q. On the exhibit that you have introduced in evidence?

A. Yes.

Mr. DAVIS. Whereupon Mr. Spaeth objected and made some interrogation of the witness about the exhibit.

Do you desire to continue that objection, Mr. Spaeth?

Mr. SPAETH. I think my only objection there was on the grounds of relevancy.

The COURT. Overruled.

Mr. DAVIS. That completes the direct examination, if your Honor please.

Mr. WILLIAMS. Your Honor, we think it would be a more orderly process if we continued with the cross-examination at this time so that the whole deposition goes in, if that is agreeable with your Honor.

The COURT. Yes.

Mr. SPAETH. Cross-examination begins on page 47, does it not?

[725] Mr. LISLE. Yes.

Cross-examination by Mr. SPAETH:

Q. What is the service area of your bank?

A. This service area is 150 mile radius.

Q. What do you understand by the term "service area"?

A. The area in which we do business.

Q. Does that mean the area in which you do the bulk of your business or is this the area in which you do all of your business?

A. It is the area in which we do the bulk of our business. Naturally some business is done in New York City and other places.

Q. What would be the smallest geographical area with Chattanooga as the hub which would circumscribe the area from which you secure 75 percent of your desposits?

A. I wouldn't know, Mr. Spaeth.

Q. When your bank merged with—I believe it was St. Elmo——

A. Yes.

Q. Was that on application to the Comptroller of the Currency?

[726] A. Here again I do not recall the exact date of our merger. It would have to have been with the approval of the Comptroller or the State Banking Commissioner.

Q. Do you happen to know what you said in response to the questionnaire which asked what the service area was of the bank?

A. I had nothing to do with that at the time.

Q. Do you know what the service area is of the Hamilton Bank?

A. It is slightly larger than ours. I would say larger. How much larger I don't know.

Q. What other banks compete for business in your service area?

A. You are speaking of commercial banks?

Q. Yes.

A. The First National Bank of Atlanta, the Citizens and Southern National Bank, the Fulton National Bank of Atlanta, the Trust Company of Georgia, the First National Bank of Birmingham, the Birmingham Trust and Savings Bank, the Third National Bank of Nashville, the First American National Bank of Nashville, the Commerce Union Bank of Nashville, the Park National Bank of Knoxville, the Hamilton National Bank of Knoxville, and the banks in all of the small towns intervening.

[727] Q. What additional banks would be competing with Hamilton in their service area?

A. Perhaps Memphis banks, Louisville, Savannah, Montgomery, and, as I say, all the intervening banks and all banks in the major cities where the business is worthwhile.

Q. The figures listed in the several charts pertaining to Chattanooga banks do not, I take it, segregate the figures with respect to each bank's service area?

A. No.

Q. So that there is included in the Hamilton Bank's figures loans, deposits, et cetera, for which you do not compete?

A. I am sure there are. It may be lack of knowledge, though. It may be lack of desire for the business. I am sure the same thing is true of ours, that there are loans and deposits for which they do not compete.

Q. Now, Mr. Harville asked you a number of questions relating to competitive advantages and disadvantages fixed by your bank and others, the Pioneer Bank. Were you speaking with any detailed knowledge as to the competitive advantages and disadvantages faced by Pioneer, or is this based purely on your own experience with respect to this bank?

[728] A. Well, I do know that the Pioneer Bank has been able to branch itself. The fact that the larger banks possess branches before they began has not impeded their ability to

branch successfully and in competition with us in established areas.

Q. But you do not know specifically how they feel about the competition which they face from Hamilton?

A. No.

Q. In that respect you can only speak for your own bank?

A. That is correct.

Q. Do you have any familiarity with Lexington, Kentucky?

A. None.

Q. The answers to Mr. Harville's questions relating to the bank situation in Lexington were based entirely on the facts and figures you have told us about?

A. In light of my experience.

Q. I believe you stated that the only area left for competition between banks as the result of regulations imposed by the federal authorities and the State of Tennessee was in quality of services; is that correct?

A. There undoubtedly are new services which have not been tapped by any of us. We are constantly on the [729] lookout for those. There are unexplored areas in individual banks, I know. But generally speaking, there is not much new in the business. That is correct.

Q. Might a loan application be granted by one bank which would be denied by another?

A. Repeat, please.

(Thereupon, the pending question was read by the court reporter.)

A. Very definitely.

Q. Do banks compete with one another in terms of interest rates?

A. Yes.

Q. Do they compete with one another as to other conditions in loans?

A. Absolutely.

Q. The number and quality of services offered?

A. Yes.

Q. You stated, I believe, in response to Mr. Harville's question that in your opinion size was not a factor in competition in

banking. Am I correct in characterizing your testimony in that manner?

A. I believe my testimony was that size was not the compelling factor; that is, a bank can compete insofar as its resources permit it to compete.

[730] Q. So, as I understand you, would it be fair to say that size is a factor but not the only factor in bank competition?

A. Size is a factor, but it is not a compelling factor. It is a factor both ways, Mr. Spaeth; it is a factor in favor; it is a factor against.

Q. Do you think these two cancel each other out in all cases?

A. That depends on the individual situation, I think.

Q. It might be different in Lexington from Chattanooga?

A. It could conceivably be due to the quality of management, the aggressiveness, the character of the population. I can only speak on that subject insofar as Chattanooga is concerned.

Q. Your position, then, I take it, is that even if one bank is larger than another bank, it is still possible for another bank to remain alive and in competition?

A. It is possible for another bank to flourish.

Q. Would the larger bank by virtue of its size have a competitive advantage?

A. There would be a competitive advantage on a national scale.

Q. How about a local scale?

[731] A. On a local scale, I think the advantage is weighed out. The personal element enters into that in competition for local business. Certainly the larger bank need not have any competitive advantage.

Q. Are there depositors who are concerned about the size of the banks so that they would put their money only in the larger bank?

A. I am sure there are some.

Q. Is advertising important in banking?

A. I wonder. We spend a lot of money, but you can't see tangible results from it. It can't replace the personal contact.

Q. Your bank does do a lot of advertising?

A. Yes.

Q. Does the Hamilton Bank do a lot of advertising?

A. Yes. I think the advertising media are the ones that profit.

Q. When Mr. Harville asked you whether the size of the First Security Bank of Lexington resulted in your opinion in a power to exclude other banks from competition, was your answer dependent in any way upon the relative size of the institutions, or is your answer based upon your belief that size is not a compelling factor?

A. It is that size is not the main factor.

[732] Q. So that if First Security were even larger relatively to the remaining banks, your answer would be the same?

A. I think they would be even more vulnerable, Mr. Spaeth. That is based on my experience in Chattanooga with the Ridgedale Bank and Trust Company and the substantial growth that was realized by it.

Q. I take it, then, that your answer would be the same if, let us say, First Security merged with two of the remaining three institutions and had, let us say, 90 percent of the business? Your answer would still be the same?

A. I think before the next day dawned, there would be an application for another bank, because people are going to get mad at the First Security sooner or later.

Q. Why did your bank merge with the St. Elmo Bank?

A. The St. Elmo Bank and Trust Company was a small bank of approximately $1 million that was begun by an official of the Chattanooga Medicine Company at a time when St. Elmo was in the country. It was operated exclusively for the people of the medicine company and the people in that little individual area.

No effort was made to expand its operations. It was a convenience factor in that area. None of the other banks were operative there. When the guiding light of that [733] bank passed away, it was their desire to sell it. And we, in turn, established the branch there to provide the service that had been carried on and expanded that service too.

Q. I take it you didn't do this purely as a matter of public service. You expected to make money on this?

A. Yes, sir. I expect to make money out of everything I do. But they go hand in hand, because it is better to be good for the public or it won't be good for me.

Q. I didn't mean to indicate any inconsistency by making money to perform a public service. Did your bank realize at the time it would probably suffer a loss in deposits?

A. We did not feel we would have a loss in deposits in that particular area due to the small scope in which that bank operated and the need in that area for additional services.

Q. You say, though, that, as I understand your testimony, it is rather well known in banking that there is a loss of deposits usually consequent upon a merger?

A. Yes.

Q. Yet banks do merge?

A. And yet banks do merge.

Q. And that is because presumably they feel the resultant advantages will outweigh that disadvantage?

[734] A. That is correct.

Q. The loss in deposits is usually a temporary phenomenon?

A. Yes, as a rule.

Q. You stated, I believe, that your bank was purely a trust company until around 1945?

A. I said predominantly, did I not?

Q. Predominantly. I am sorry. Predominantly?

A. Yes.

Q. You did not become a progressive commercial bank until around 1945?

A. That is right.

Q. So that these charts which begin at, I believe, 1949 reflect the situation in which you were just becoming to be a large factor in commercial banking business?

A. That is correct.

Q. You stated also, I believe, that in response to Mr. Harville's question that the American National changed its attitude or practices when you became an aggressive commercial banking factor?

A. The attitude had to change first.

Q. I wonder if you would explain what you meant?

A. The active management of the bank.

Q. I beg your pardon. I think I misstated my question. [735] What I should have referred to was the Hamilton. Did I?

A. No. You referred to the American.

Q. I beg your pardon. I will rephrase the question. I believe your testimony was in response to a question of Mr. Harville's that when you became an aggressive competitor in the commercial banking scene in Chattanooga, that Hamilton Bank changed its policies.

A. It reactivated its aggressiveness. It became more aggressive. Not that it had not been up to that point. It had been. But it became even more interested in dressing up its branches in the areas that they alone were operative and in seeking and calling and in making personal contacts. It improved the competitive situation.

[736] Q. Now, as I understand this chart No. 4, I notice that your bank's share of the total of local deposits was 39.5 percent in 1949.

A. That is correct.

Q. And this is the time when you were just coming to be a substantial factor in competition?

A. Yes.

Q. And in 1960 your percentage had dropped to 39.22?

A. That is correct.

Q. I believe you stated that Chattanooga was not a large local market?

A. That is correct.

Q. In response to Mr. Harville's question.

A. That is right.

Q. What do you mean by that?

A. I mean that so much of the industry here is of national consequence so that borrowing for that is perhaps done out of the city. A great many of our old-line industries have adequate capital to finance their own operations so that the market, the demand factor, is not as it is in distribution areas such as Nashville and Atlanta.

This is an industrial city and predominance of this well-established industry and the principles of northern and eastern interests.

[737] Q. I take it, then, the reasons why local establishments of large, national industrial concerns at least do not do substantial business with you is because this is generally done by their home office?

A. Yes. A case in point is the Quaker Oats Company which has a cereal mill and a feed mill here. Were they to allow us to participate in their borrowing program, it would necessitate an additional note all of the time. It would create a demand from the Memphis plant to participate in it, so that they confine their financial operations to their Chicago banks.

Q. Would centralized bookkeeping be a factor, too?

A. Yes. On the part of the company, you mean?

Q. Yes.

A. Yes.

Q. I believe you said that the Hamilton Bank was an affiliate of numerous other banks, or at least it was a part of a holding company operation.

A. Yes.

Q. Are the operations of the Hamilton Bank run by its own board of directors?

A. Oh, yes.

Q. What voice does the—I believe you said Hamilton Associates—have?

[738] A. It's a stockholder.

Q. It's a stockholder?

A. Um-hmm.

Q. And it does not actively participate in the management?

A. No.

Q. There is no centralized policy for all of the Hamilton affiliates?

A. No. The Hamilton National Bank of Knoxville is operated much differently than is the local one, much less aggressively than is the local one.

Q. Are there inter-bank transactions between these various holding company banks?

A. I don't know, none, I am sure, other than normal business transactions.

Q. Now, a few moments ago I asked you about your belief

concerning the importance of size in bank business. Would that also be true of trust business?

A. Mr. Spaeth my regard for size is not a compelling factor at all. I want this bank to be operated properly, I want it to make money, and size as a criterion for success in the banking business doesn't hold water, as far as I am concerned, so that to be either the largest bank or the largest trust department in the country has no attraction unless at the [739] same time it can be the best and deliver the best contribution to the community.

Q. Do you believe then that if one bank had a hundred percent of the trust business at a given time that this would not be a compelling factor?

A. I think that if one bank had a hundred percent of the trust business available to commercial banks that there would be in the hands of attorneys, accountants and the like a substantially greater share of the business than there now is because we have seen it to great degrees of people who prefer not to have us handle an estate and place it in their attorney's hands, the attorneys and the accountants do by far the greatest amount of probate work.

Q. Is this true of all sizes of estates?

A. That I don't know. I am sure that there is a relation.

Q. Is there an advantage in a corporate trustee or a corporate fiduciary?

A. Yes, there is continuity established. I think that is the greatest contribution, the greatest factor for a corporate trustee.

Q. Permanent capacity would be another?

A. Permanent capacity.

Q. Would specialized skills of trust department people devoting all their time to trust activities be an important [740] factor?

A. Definitely.

Q. Would the group judgment of the trust people in combination with the bank's officers in terms of making the proper investments and making the right decisions be an important factor?

A. Group judgment is good, yes.

Q. Does the fact that the bank is always open whereas an attorney or an accountant might be off in Florida at the time important?

A. Yes.

Q. Does the fact that a bank has obvious financial responsibility more than most individuals an important factor?

A. Well, of course, that is overcome through bonds, you could be as safe with an individual as you can with a bank.

Q. Are individuals regulated by any examining authority?

A. They are regulated by the county court.

Q. Is the fact that the bank—well, let me ask you, first, who supervises you or what authority regulates your handling of trust business?

A. The state laws of Tennessee and prudent manner.

Q. Does the Federal Reserve Board?

A. Yes.

Q. They send examiners down?

[741] A. Yes, and the Comptroller's office examines periodically.

Q. Does that fact, that is, that you are periodically examined by state and federal supervisory authorities constitute a competitive advantage over individuals for trust business?

A. It could. In our case it does not because we are going to insist on the opinion of counsel prior to making any important decisions.

Q. The bond of an individual, does he just file a bond or is there a surety on that bond?

A. Well, that depends on the individual and the size of the estate that he is handling. I am sure that they would take the bond of certain individuals but, generally speaking, a surety is involved.

Q. There is a cost associated with that?

A. That is correct.

Q. That cost is usually borne by the trust estate?

A. That is correct.

Q. Does the bank have to file a surety bond?

A. No, as a rule not, but we are required to secure our deposits, our cash of trust.

Q. If an individual is concerned with such matters as perma-

nent existence and permanent capacity, does he have any alternative?

A. Excuse me, I lost you.

[742] Q. I say, if an individual who wants to set up a trust desires that the trustee have permanent capacity, permanent existence and so forth, does he have any alternative but a commercial bank?

A. Does he have any alternative other than a bank?

Q. Yes. In this area?

A. Well, of course, he has successor possibilities in a law firm always and in an accounting firm, not always as a rule. After the termination of the administration there is available to the trustee a number of agents, investment houses and the like, property management groups, so that were something to happen to an individual trustee the management of the account could continue.

Q. I believe you stated that the percentage of trust business controlled by an individual bank, in your opinion, was not a compelling factor or the compelling factor, I believe is the way you put it, it is an advantage for someone who is going to leave a trust estate?

A. Is it an advantage to have it in a bank?

Q. Let me say this: Does that bank have an advantage over banks having smaller trust departments?

A. There are collateral advantages.

Q. What are those advantages?

A. Well, the larger the department, of course, the [743] larger the amounts of uninvested cash, those amounts are deposited in the bank. If there is real estate involved there is the responsibility of either sale or lease, which could create mortgage loan opportunities, which could create getting there first as for the banking business. It does not always follow that you get it, but you get there, you have an opportunity to solicit the account when you lease a building to someone.

Q. Is it a substantial advantage for the commercial banking business then?

A. It is an advantage to a commercial bank to have an active department anywhere it can, yes.

Q. Because it does secure commercial banking business from that department?

A. That is true.

Q. Is it also an advantage for the trust department of a bank to have a large commercial banking business?

A. No.

Q. It is not?

A. No, that has been disproved in our own case where the trust business was built.

Q. Your bank was predominantly a trust bank, though?

A. That is right. There are institutions operated and operated well that have negligible banking departments.

[744] Q. Do you feel that you were able to secure commercial banking business as a result of your trust department?

A. Yes.

Q. I took it from your testimony on correspondent banking business that the chief service your bank offers is with respect to the clearing of checks, am I correct?

A. That has been the new service that we have added recently.

Q. And it is as a result of that new service that you have been able to secure so much correspondent bank balances, is that correct?

A. That has aided the other services. If a bank does not use you as a clearing function in a great many cases they will not use you to take their excess loans, perhaps, but you have got no obligation to them.

Q. Now, exactly what happens when you clear a check for a correspondent bank, just whose check is it drawn on, what bank and what happens to it?

A. This is a third party check drawn on a paying bank which has been either cashed or deposited in the payee's bank. The payee's bank forwards that to us for collection. We, in turn, forward that check to the paying bank, either directly or through another correspondent bank or through the Federal Reserve Bank for payment.

[745] Q. So what the payee bank is concerned about, I take it, is the time in which it recovers the amount it paid out?

A. Utilization of its money and the promptness of return items.

Q. During the period in which the Hamilton Bank became an active factor or, let us say substantial factor, in competition for trust business, did your trust business increase?

A. Yes.

Q. This is with respect to the last six or eight years, is that the time, has it been six or seven years since Hamilton became an active factor?

A. This was prior to six years ago, I said I think in 1945.

Q. Well, let me ask you again, I am sure the record already shows it, but what year was it in which Hamilton became a substantial factor in the trust business?

A. I don't know, eight years ago.

Q. Eight years ago. Do you have any idea of how much your own trust business has increased since then?

A. How much my own trust business has increased since then?

Q. Yes.

A. No, not right offhand I don't.

Q. Would you say it has been substantial?

[746] A. Yes.

Q. Mr. Yarnell, is Chattanooga an area of substantial growth, has it been for the last, say the last ten years?

A. No.

Q. It has not?

A. No.

Q. Would you say——

A. (Interposing) I say no in comparison to other cities in our area.

Q. Would you say the growth has outstripped the ability of the local banks to take care of the local demands for banking business?

A. No. The local banks are doing a better job of taking care of demand today than they were ten years ago.

Redirect examination by Mr. HARVILLE:

Q. Does Chattanooga have any branch of any Federal Reserve Bank located in it?

A. Does Chattanooga have a Federal Reserve Branch?

Q. Yes.

A. No.

Q. What is the nearest one?

A. Atlanta.

Q. Does Nashville have one, too?

[747] A. Nashville has one, too.

Recross examination by Mr. SPAETH:

Q. In what Federal Reserve Branch are Chattanooga reserves deposited?

A. Atlanta.

Q. Is that the Federal Reserve Bank for all banks in this area?

A. The Sixth District, that's the main office.

Mr. DAVIS. That completes that deposition, your Honor. We have one other, if you want to go into it at this time.

The COURT. It is four o'clock. We will be in recess, gentlemen, until Monday morning at ten o'clock.

(Whereupon, at 4:00 o'clock p.m., the Court recessed, to reconvene Monday morning, 10:00 o'clock a.m., February 26, 1962.)

[749] In the United States District Court Eastern District of Kentucky at Lexington

Transcript of Testimony and Proceedings—February 26, 1962

[750] PROCEEDINGS

The COURT. Gentlemen, are you ready to proceed? For the defense?

Mr. ODEAR. We are ready, sir.

The COURT. Call your witness.

Mr. ODEAR. I call Mr. Bruce Kennedy.

Whereupon BRUCE KENNEDY was called as a witness, and having been first duly sworn, was examined, and testified as follows:

The CLERK. The witness, your Honor, is Mr. Bruce Kennedy.

Direct examination by Mr. ODEAR:

Q. Where do you live, Mr. Kennedy?

A. Frankfort, Kentucky.

Q. Do you hold any official position with the Commonwealth of Kentucky?

A. Yes, sir. I am Commissioner of the Department of Economic Development.

Q. Generally what does the Department of Economic Development do?

A. Primarily it is concerned with industrial development, to bring new industries to Kentucky, to raise the economy and provide jobs.

[751] Q. How long have you been connected with that department?

A. I was appointed Commissioner on December 8, 1959.

Q. In the course of the discharge of the duties of your department, have you caused a study to be made of the population, employment, and industrial growth of Lexington and Fayette County, Kentucky?

A. I have.

Q. From that, have you caused a chart to be prepared?

A. Well, I have some figures here.

Q. You have a statement of some statistics on that field before you?

A. That is right.

Q. Who prepared that?

A. Mr. Damon Harrison, Director of Research in our Department.

Q. Was that prepared under your supervision and direction?

A. Correct.

Q. Are you familiar with the figures set forth thereon?

A. I am.

Mr. ODEAR. Have you gentlemen seen that?

[752] You have several copies there, don't you?

The WITNESS. I have just got one.

(A copy of the document was handed to counsel for the Plaintiff.)

Mr. ODEAR. Would you like a moment to examine that, Mr. Williams?

Mr. WILLIAMS: Yes, please.

By Mr. ODEAR:

Q. Calling your particular attention to Fayette County, Mr. Kennedy, what has been the population growth of Fayette County from the years 1950 to 1960?

A. It has been 311,000 people; 31 percent. It was a little over 100,000 in 1950; it was 131,000—almost 132,000 in 1960.

Q. That is a change of 31 percent?

A. That is correct.

Q. What has been the change in the overall employment in Fayette County from 1950 to 1960?

A. In 1950 there were 37,685 people employed in Fayette County. In 1960, there were 49,750. That is an increase of 32 percent.

Q. Now, particularly with reference to employment in the manufacturing field, what has been the situation of change between 1950 and 1960?

[753] A. In 1950 there were 3,400 people in manufacturing. In 1960, it had grown to 7,538, an increase of 122 percent.

Q. Would you say that based on your experience that was a large or a small increase? Or how would you classify that increase in manufacturing employment?

A. Practically phenomenal.

Q. On the large side?

A. Yes, sir.

Q. I call your attention to retail sales and ask you to compare—I don't believe you have 1950 to 1960, but you have 1948 to 1958, do you not?

A. Yes, sir.

Q. Would you tell the Court what the change has been in retail sales over that ten-year span?

A. Yes. I might explain, although I think it is obvious, that the reason 1948 and 1958 were used was because they were the years in which we had documented information.

Q. What were the results of your study?

A. In 1948 retail sales were $105,624,000. In 1958, they were $170,427,000, an increase of 61 percent.

Q. I call your attention to median family income. What do you mean by median family income?

A. It is the average of the incomes for families [754] in this area.

Q. What has been the growth in that field in the ten years from 1950 to 1959, or the nine years?

A. Well, in 1950, the median income for families was $2,733. In 1959, it was $5,377, an increase of 97 percent.

Mr. ODEAR. You may examine.

I would like to ask you if you would file that chart as a part of your testimony in the case and have it marked as an exhibit.

The CLERK. Exhibit Number 96 for the Defendant.

(The document above mentioned was filed with the Clerk and marked Defendant's Exhibit Number 96.)

Mr. NOBLE. No questions.

Mr. ODEAR. Thank you.

The COURT. You may be excused.

(Witness excused.)

Mr. ODEAR. I call Mr. L. A. Jennings.

Whereupon L. A. JENNINGS was called as a witness, and, being first duly sworn, was examined and testified as follows:

The CLERK. The witness, your Honor, is Mr. L. A. [755] Jennings.

Direct examination by Mr. ODEAR:

Q. Where do you live, Mr. Jennings?

A. Dallas, Texas.

Q. Are you now connected with any banking institutions?

A. With the Republic National Bank of Dallas.

Q. In what capacity?

A. As Executive Vice President in Charge of Administration.

Q. Mr. Jennings, following your graduation from school, what was your first experience in banking?

A. I was employed as a clerk in the Silver Creek National Bank from 1924 to 1929.

Q. Where was that located?

A. Silver Creek is in the western part of the state on Lake Erie about thirty-five miles southwest of Buffalo.

Q. What state?

A. New York.

Q. And what was the next position that you held?

A. I became an Assistant National Bank Examiner in the

Office of the Comptroller of the Currency with headquarters in the Second Federal Reserve District, which is comprised of New York State, part of Connecticut, and part of [756] New Jersey, in March 1929.

Q. How long did you hold that position?

A. I was Assistant National Bank Examiner until March 15, 1935.

Q. Just very briefly would you tell the Court what duties you performed as Assistant Bank Examiner?

A. I assisted National Bank Examiners in the examination of national banks primarily.

Q. What position were you given in 1935?

A. I was commissioned as a National Bank Examiner still in the Second Federal Reserve District.

Q. How long did you hold that position?

A. Until July 1941.

Q. What, briefly, were your duties as Bank Examiner?

A. As a commissioned National Bank Examiner, I was in charge of the examination of national banks located in various areas or throughout the Second Federal Reserve District.

Q. In making examinations in that position, if you found anything that you consider to be wrong in the management of a particular bank or in its banking situation, what authority did you have to do anything about it?

A. Primarily to make recommendations to the Comptroller of the Currency. As a National Bank Examiner, I [757] could examine bank officers under oath; I could make recommendations. Usually the recommendations were followed out. But they were recommendations. And the Comptroller of the Currency had the final authority to enforce them if he saw fit.

Q. In other words, if they were not followed out, the actual acting on your findings was up to the Comptroller?

A. That is correct.

Q. Now, I believe you say you held that position until 1941?

A. That is correct, sir.

Q. What position did you hold there or were you given in 1941?

A. I was appointed Assistant Chief National Bank Examiner with headquarters in Washington in the Office of the Comptroller of the Currency.

Q. Tell us briefly what your duties were in that position?

A. Working under the Chief National Bank Examiner who covered the entire United States and three Deputy Comptrollers of the Currency, and, of course, the Comptroller of the Currency, I received, reviewed, reports of examination from various Federal Reserve Districts, prepared letters [758] for the signature of the Chief Examiner or a Deputy Comptroller of the Currency; I visited district offices and held meetings with National Bank Examiners and Assistant Examiners.

Q. What authority, if any, did you have in that position to correct errors or shortcomings of banks that were discovered by your examiners and reported to you or discovered by you from their reports?

A. Primarily to make specific recommendations to a Deputy Comptroller or to the Comptroller. Normally my recommendations would be followed out. But I, as such, as an Assistant Chief National Bank Examiner, did not have authority to make a final demand on a bank and require that it be carried out.

Q. Now, was your service in that particular job interrupted by the war?

A. It was.

Q. You entered the Service of the United States, did you, in the war?

A. Yes. In December of 1942, I entered as a private. I went through O.C.S. I was assigned to Military Government as a 2nd Lieutenant.

Q. Did your war services have any connection with banking or finance?

[759] A. Yes, it did. I was with the Finance Division of the Office of Military Government at General Eisenhower's headquarters in London, Paris, and in various spots in Germany.

Q. Now, upon the termination of the war, what did you do?

A. Upon the termination of the war, or rather upon the termination of my release, I returned to my position in Washington as an Assistant Chief National Bank Examiner.

[760] Q. Is that the same position you held prior to your entering the services?

A. Yes.

Q. What was the next position that you held and when were you appointed to it?

A. I was appointed Third Deputy Comptroller of the Currency on September 1, 1950.

Q. Would you tell us, first of all, how long did you hold that position?

A. Approximately one year—when I was appointed Second Deputy Comptroller of the Currency.

Q. What were your duties as Second and Third Deputy Comptroller of the Currency?

A. I was given by the Comptroller of the Currency jurisdiction over four Federal Reserve Districts.

Q. What four Federal Reserve Districts did you have?

A. I had the Third Federal Reserve District which has headquarters in Philadelphia. I had the Texas District, the Eleventh District for a while. I had the Fourth Federal Reserve District, with headquarters in Cleveland—which includes this area of Kentucky.

Q. Did you receive a further promotion after that?

A. Yes. I became First Deputy Comptroller of the Currency on February 18, 1952.

[761] Q. How long did you serve as First Deputy Comptroller of the Currency?

A. From February 18, 1952, until May 15, 1960.

Q. As such, did you have any supervisory capacity over the banks located in the Fourth Federal Reserve District, which includes the area of Lexington, Fayette County?

A. Yes. As First Deputy Comptroller, I had the Fourth Federal Reserve District under my direct jurisdiction from February 18, 1952, until approximately the middle of 1958, when by virtue of my other duties it was necessary that I ask the Chief National Bank Examiner and the office to take over the Fourth Federal Reserve District.

I continued to carry the New York and the West Coast Districts.

Q. By whom were you appointed First Deputy Comptroller of the Currency?

A. By the Comptroller of the Currency, Preston Delano, with the consent—as required by law—of the Secretary of the Treasury, John Snyder.

Q. When the Comptroller who appointed you resigned from his office, did you serve as Acting Comptroller of the Currency of the United States?

A. Yes, I did.

Q. For how long a period did you serve in that capacity?

[762] A. From approximately the middle of January 1953 until the middle of April 1953, when the new incumbent was sworn into office.

Q. As First Deputy Comptroller, did you ever have any association or dealings with the Federal Deposit Insurance Corporation?

A. Yes, I had many dealings with the Federal Deposit Insurance Corporation.

Q. Tell us briefly in what connection you would come in contact with that Corporation and its operations.

A. Apart from day-to-day work on banking problems, the First Deputy Comptroller of the Currency, by statute, is the Acting Vice Chairman of the Board of the Federal Deposit Insurance Corporation when the Comptroller of the Currency is absent from the city, or ill.

So I was very close to the activities of the Federal Deposit Insurance Corporation all during my term as First Deputy Comptroller.

Q. As First Deputy Comptroller, did you have any experience in passing upon applications for the mergers of banks or the consolidations or sale where the continuing bank or the resulting bank was to be a national bank?

A. I had a great deal of experience in that area.

Q. Tell the Court briefly how that would come about and your duties in connection therewith.

[763] A. When a bank, or I should say two banks, decide they wish to merge or consolidate, they must—if the acquiring bank is to be a national bank—receive the approval of the Comptroller of the Currency.

Most of my experience was, of course, prior to the passage of the Merger Act of 1960.

Upon receipt of an application to effect a merger, we obtained a great deal of pertinent information from the banks concerned. Normally we would seek the advice of the District

Chief National Bank Examiner. Almost always the applicants would make a trip to Washington and visit with me or one of the other two Deputy Comptrollers, or with the Comptroller of the Currency.

We briefed all of the material. The Assistant Chief National Bank Examiner, who had the specific District under his immediate jurisdiction, would make his recommendation to our Chief National Bank Examiner. Our Chief National Bank Examiner would make his recommendation, which was then passed on in turn to each of the Deputies.

I as the First Deputy would receive the report with all of the facts just prior to its being passed on to the Comptroller of the Currency. I would review all of the pertinent facts and make my recommendation.

[764] In the average instance I would discuss the entire case with the Comptroller of the Currency prior to his arriving at a final decision on the case.

Q. Were you serving as Acting Comptroller of the Currency when your employment by the Government was finally terminated?

A. No, I was First Deputy Comptroller at that time. Of course it is understood that whenever the Comptroller was ill or out of the city I was the Acting Comptroller.

Q. When did you terminate your duties as First Deputy Comptroller?

A. May 15, 1960.

Q. Did you then take up employment elsewhere?

A. Yes, I accepted employment as a Senior Vice President of the Republic National Bank of Dallas.

Q. I believe your proper title at the present time is Executive Vice President of that bank?

A. Yes. I was given that title last December, 1961.

Q. Tell the Court where that bank is located.

A. It is located in Dallas, Texas.

Q. How does it compare in size with other banks in Texas?

A. It is the largest commercial bank in Texas. It is the largest commercial bank south of the Mason-Dixon Line.

Q. Just very briefly what are your duties in connection [765] with your employment by that bank?

A. As Executive Vice President in charge of Administration, I cover all areas of activity in the bank. I am a member of the Executive Committee. I am a member of the Senior Loan Committee. I am a member of the Commodity Loan Committee. I am a member of the Trust Committee.

Q. Mr. Jennings, what if anything have you done to prepare yourself for giving testimony in this action? What have you seen, looked at, and done? tell the Court, please.

A. I believe I have received all of the exhibits that have been presented by the Government and by you. I have reviewed all of them.

Q. Were you familiar already in a general way with the banking situation in Fayette County, Kentucky, by reason of your previous duties in connection with the Office of the Comptroller?

A. Yes, I was familiar with it in a general way.

Q. Have you examined all these exhibits that you have referred to?

A. Yes, I have.

Q. Does that include the report of the Attorney General to the Comptroller and the report of the Federal Reserve and the report of the FDIC?

A. Yes.

[766] Q. Also the findings of the Comptroller?

A. Yes.

Q. And the various other charts?

A. Yes.

Q. In the course of your duties with the Office of the Comptroller, what opportunity did you have to acquire particular knowledge concerning the commercial banking situation as it existed in Lexington at the time you were serving in that office?

A. Well, as First Deputy Comptroller for a period of at least six years, during which I had direct jurisdiction over the Fourth Federal Reserve District, I met in Washington on many occasions with the District Chief National Bank Examiner in charge of the District.

On various occasions I journeyed to Cleveland and held meetings with the examiners and assistant examiners who work

in the Fourth Federal Reserve District, including those men assigned to this area of Kentucky.

During such meetings we discussed the banks generally in the Fourth Federal Reserve District. I might add that a national bank examiner who was in the Kentucky area for a good many years—Mr. C. E. Genway—visited Washington on a number of occasions, came to my office, and we discussed the banking situation in Kentucky.

[767] Q. When you were with the Comptroller's office, you testified that you had occasion to look into many applications for mergers and consolidations. What were the factors that were considered in the Comptroller's Office in passing upon applications to merge or consolidate?

A. We always considered very carefully all of the banking factors: Would the merged institutions be adequately capitalized? Would it have a sound management? Would its earnings position be satisfactory?

We looked to see if any weaknesses presently existed in the merging banks which might not be corrected in the merger. We wanted to be very positive that the merged institution would be a credit to the community, to the national banking system, and to be able to serve its trade area well.

Q. Prior to the so-called Bank Merger Act of 1960, was any consideration given to the competitive factor in considering mergers for consolidation?

A. Yes.

Q. What consideration was given to that competitive factor?

A. Well, we considered very carefully the number of banks in the community where the merger was to take place. We considered the size of each of the banks that would be competing with the merged institution, the general character [768] of their managements, their capitalization, their ability in effect to compete adequately against the merged institution.

Q. Mr. Jennings, in the field of commercial banking, are there many or few regulations which govern the activities and business conduct of commercial banking?

A. I would say that commercial banking is one of the most highly supervised and regulated of all industries. I know of no industry offhand that is more highly regulated or supervised.

Q. Based on your experience, would you give the Court your opinion as to whether or not there is substantial competition between commercial banks in interest rates charged on commercial and industrial loans?

A. There is a small area of competition in the interest rate field on loans. However, we must bear in mind that that area is small mathematically. For all practical purposes it ranges from the prime rate of 4.5 percent up to the legal rate that is permitted in the state.

In Kentucky, that is 6 percent. That range is important to a borrower, but not to a point where it makes, let's say, a strong competitive difference as between banks. Banks have to be very sure when they are making a loan to a corporation or to an individual that—based on all of the factors, [769] the term of the loan, the risk elements—that the rate is a fair one to that borrower. Otherwise the borrower would in all probability try his luck at another bank to see if he couldn't borrow the money at a lower rate.

Competition is in that area, but it is rather small. It is not material in my judgment.

Q. Would you say that was true of interest rates charged on other types of loans made by commercial banks such as real estate loans, loans to financial institutions, and loans in the various fields where commercial banks make loans?

A. I will have to break that down a little bit. Real estate mortgage loans and term loans normally will bear a somewhat higher rate than the commercial loans because of their maturities. They are long-term loans. The real estate mortgage loan rate is certainly influenced to a great degree by the rates that legally may be charged on FHA and G.I. loans.

It also must be borne in mind that the large insurance companies are very active in the real estate mortgage loan field and the rates that they charge influence mortgage rates across the country.

So they will move in a much narrower, but somewhat higher, range than commercial loans.

Q. Would you say that competition in that field is one of the principal areas of competition between banks?

[770] A. No, I would not. It is a minor area where competition comes into play, but not material in my judgment.

Q. Would you say that that was true of the lending field generally, or is there any field where the interest rate charged is one of the primary on principal fields of competition between banks?

A. There isn't any doubt that banks want loans, and they compete briskly to say the least to obtain loans. But it is my own opinion that the interest rate area does not involve a major area of competition so far as obtaining the loans is concerned.

Q. Now, directing your attention to the interest rates paid on time and savings deposits by banks, banks do compete with each other in trying to obtain time and savings deposits, do they not?

A. Yes, they do. It must be borne in mind, of course, that all commercial banks other than uninsured commercial banks—there are only a handful of such banks—are governed by Regulation Q or Regulations issued by the Federal Deposit Insurance Corporation establishing top or maximum limits on the amount of interest that may be paid on savings or time deposits.

The banks do compete strongly for savings and time money.

[771] Q. In your opinion how important are the charges made by banks for their trust services in the field of competition between banks for trust business?

A. Yes, that again is a competitive area up to a point. Two banks that are competing for trust business certainly do their level best to get their share of the available trust business in the community.

Q. There again would you say that was one of the chief fields of competition or means of competition in the trust field?

A. I am not sure I understand your question.

Q. My question is: In your opinion, based on your experience, is price charged for trust services one of the principal areas or means of competition? Or are there others that are more important?

A. The range of charges made for trust services in my opinion is not a major area of competition.

Q. What in your opinion, then, are the major or primary

competitive factors in competition between commercial banks today?

A. I think the major area involves service, the ability of a bank's officers and its employees to truly serve the financial needs of a community. The capacity of a particular bank to meet the financial needs of a community is important; [772] the convenience of its banking offices is important; and obviously personalities always come into play in competition—so that is an important area, personal relationships.

[773] Q. Based on your experience and observations, tell the Court whether or not competition in the areas where banks are permitted to compete with each other is keen competition or mild competition? Or how would you classify it?

A. I would classify it generally as highly competitive. In my own experience since 1924, I do not know a period where banks are more highly competitive than they are today or have been for the last ten years.

Q. Does the liquidity requirement of banks affect the power or right of banks to compete with other banks or the amount of business which a given bank can do?

A. I would say that all commercial banks are confronted with generally the same type of liquidity requirements.

Certainly the liquidity requirements that commercial banks must observe have a definite bearing on the amount of loans that may be made in their trade area. I would say that the liquidity requirement as such varies a bit. On a national average basis, commercial banks presently have in the neighborhood of 47 percent of their total deposits offset by cash due from banks, including the reserve balance with the Federal Reserve Bank, and U.S. Government securities having various maturity ranges.

[774] On the other hand, that is just an overall national average. We know that the liquidity requirement generally will range from 35 to 45 percent of total deposits being in cash due from banks and U.S. bonds.

Q. In your opinion, does this liquidity requirement have any effect upon the bank's ability to earn money or to show a profit?

A. Yes, it does, because the amount that is kept or carried on deposit with the Federal Reserve Bank and the cash that is on

hand and the amounts that are on deposit with correspondent banks, the so-called due-from bank accounts, are not earning assets.

Of course, going into the secondary area of liquidity reserves, the U.S. Bonds are earning assets and do mean something to a bank. But otherwise they hold the earnings down materially.

Q. Directing your attention to the field of competition, are there few or many communities in the United States today where they have only one bank?

A. There are approximately 7,000 communities that are served by one bank.

Q. What has been your experience as to whether or not in communities of that type that community received adequate banking service?

[775] A. It has been my experience in the one-bank communities, with only a negligible number of exceptions, that the bankers operating such banks make no attempt whatsoever to take advantage of their so-called competitive position in the community. They give good service, they give fair service, and they do not over-charge.

I think it speaks very well for the banking fraternity that so few instances arise in one-bank communities where one might think that the public was being over-charged or not treated as it should be. It is a wonderful record, in my judgment.

Q. What are the reserve requirements for country banks today?

A. A country bank must maintain 12 percent of its demand deposits and 5 percent of its time and savings deposits in the form of a balance with the Federal Reserve Bank of its District.

Q. And how do you define the term "country bank" for that purpose? Is there a good definition for that?

A. Well, it is difficult to define it exactly. The Federal Reserve Board has been engaged in recent months in trying to come up with a somewhat new definition.

But in general, the reserve and reserve city banks that must maintain higher reserves are located in cities [776] where there is a Federal Reserve Bank or a branch of a Federal Reserve

Bank, and in addition those banks have a considerable amount of correspondent bank business due to bank accounts.

There are small banks in small cities that are not required to carry the higher reserve. They are looked upon as country banks. That is sort of an unfortunate phrase, because there could be a country bank in the outskirts of New York City that would not have to maintain the higher reserve requirements.

Q. Well, the classification as to whether they are country banks or city banks does determine what reserve requirements they have to maintain; is that correct?

A. That is correct.

And, of course, the reserve city banks and the reserve banks do have to maintain a higher percentage of their demand deposits in the form of a cash balance with the Federal Reserve Bank of their District.

Actually it is 16½ percent.

Q. Do you know how First Security National Bank and Trust Company of Lexington is classified as to whether it is a country or city bank?

A. It is classified as a country bank for reserve purposes.

[777] Q. If banks keep their reserves only up to the minimum required by the Federal Reserve regulations, is that generally sufficient to satisfy the examining authorities?

A. It would not satisfy the examining authorities, and it would not satisfy the banker. A banker could not operate with a liquidity measured solely by the balance in the Federal Reserve Bank of his District. He simply couldn't operate.

Q. Why is that true?

A. Well, the reserve balance that is on deposit with the Federal Reserve Bank may not be drawn upon other than to the extent that the amount or the balance is in excess of the legal reserve requirements.

A member of the Federal Reserve System must maintain its legal reserve on an average normally figured each fifteen days that is in complete compliance with the 12 percent of demand deposits and 5 percent of time deposits requirements.

Q. How much reserve requirements do the examining authorities strive to require then if the minimum fixed by the Federal Reserve regulations is not considered sufficient?

A. The examining authorities follow the rule of reason. If a particular bank is considered to be non-liquid by virtue of having too large a percentage of loans in relation to deposits, the Examiner would discuss the matter [778] with the banker. He might even recommend to the banker or to the Comptroller that the bank be required to carry a more adequate liquidity reserve in relation to its deposit liabilities. That area is not covered by law or regulation other than the amount that must be maintained with the Federal Reserve Bank.

Q. Now, in the field of investments, are there regulations and restrictions on commercial banks in the investment of their funds in securities?

A. Yes, there are many regulations and statutes bearing on that field.

A national bank may not invest in corporate securities or special revenue municipal authority securities in an amount in excess of 10 percent of its capital and surplus in the obligations of any one corporation or any one special revenue municipal authority.

Going on from there, if you wish——

Q. Just briefly what are some of the others?

A. Banks are not restricted so far as their holdings of U.S. Bonds or general obligation municipal bonds. However, if a bank were to purchase general obligation municipal bonds that weren't of reasonably sound quality and had too many of them, the banker would be criticised.

In the corporate field, the investment security [779] obligations must not be predominantly speculative. They must be marketable securities, so that the bank may reasonably expect to dispose of them with a minimum of effort or problems.

Q. What are the purposes of those regulations?

A. All of the purposes are to the effect that the bank will have a sound adequately liquid investment security account that should in no way at any time endanger the solvency of the bank.

Q. Are their rules and regulations relating to the establishment of branches by national banks?

A. Yes. A national bank may not establish a branch in

its community, area, or state unless state chartered banking institutions similarly situated are so permitted to establish branches.

Q. So the state law in the state where the bank is located, where the national bank is located, does have a regulatory effect on the national bank too?

A. The state law prevails.

Q. What is the purpose of regulations governing the establishment of branches?

A. Once again solvency and the avoidance of harmful competitive results.

We in the Comptroller's Office never wish to see [780] branches approved that in our opinion would be unsound from an economic standpoint. And if a branch, a proposed branch, is unsound from an economic standpoint and there are other banks in the immediate area, it could tend to make the existing banks or branches unsound economic units.

Q. Now, passing, if you will, to the Federal Deposit Insurance Corporation, what does it do for banks today? And what are its fields of operation in banking generally?

A. It insures each depositor's account up to $10,000. Its basic purpose, of course, is to protect depositors who have $10,000 or less on deposit in banks against the failure of such bank or banks.

Q. What was the situation or history which brought about the establishment of the F.D.I.C.?

A. A very poor banking history. Just starting in 1920 or 1921, through 1930, 5500 banks closed with losses to depositors. The depression period came along from 1930 to 1934. Through 1935 possibly an additional 6500 banks closed with losses to depositors.

Additional banks closed, but the numbers I have mentioned are those where losses actually results to the depositors. It was a very bad poor history. And it was considered that some action was essential to avoid the great hardships that did inure to the communities where banks failed.

[781] Q. Does the FDIC have any power to regulate or govern its member banks?

A. Yes, it has a great deal of authority. I suppose its strong-

est weapon is to take away its insurance from an individual bank if the management fails to correct unsound or unsafe practices that are found in such a bank.

Q. The FDIC causes periodic examinations to be made of individual member banks, does it not?

A. Yes, it does. It examines at least once a year, usually in conjunction with the state examining authorities, all state-chartered, non-member banks. By non-member banks, I mean non-members of the Federal Reserve System that are insured by the Federal Deposit Insurance Corporation.

Q. I was referring to banks that are insured, whether they are members of the Federal Reserve System or not. They inspect all banks that have insurance in the FDIC, do they not?

A. That is correct. The Federal Deposit Insurance Corporation has the legal authority to go into any insured bank, state or national.

Q. What if anything could the FDIC do if its examination of an insured bank disclosed to it that that bank was following practices which were detrimental to banking in general in its community or to other insured banks in that community?

A. The strongest weapon I have already mentioned— [782] being the withdrawal of its insurance. That is seldom resorted to. The case must be extreme. The Federal Deposit Insurance Corporation, I suppose, uses the weapon I have mentioned—the withdrawal of insurance—on many, many occasions that do not go to the point of withdrawing the insurance.

But they have that basic authority that is completely adequate in my judgment to enforce their demands.

Q. In your experience in the Comptroller's Office have you seen the FDIC use the threat of withdrawing insurance on a bank whose practices they didn't approve of?

A. Yes, I have, in a number of instances—not a large number, because our banking system has been very sound and strong for a number of years. But I have seen them use it on a number of occasions.

Q. What has been the result when they have made that threat to a bank?

A. With the exception of fourteen instances that I am aware of, the bank corrected the affairs complained of to the satisfac-

tion of the FDIC. In fourteen instances the matters complained of were not corrected.

The FDIC did withdraw its insurance, and in twelve of the fourteen instances the banks closed. In the other two instances, the banks survived.

[783] Q. It was twelve out of fourteen instances that the banks could not continue to operate without this insurance?

A. That is correct.

Q. Based on your experience, Mr. Jennings, tell us whether or not in your opinion there is any practical danger of the First Security National Bank and Trust Company, the merged bank in this case, raiding the customers of another bank in Lexington.

A. I would say there is no possibility of that occurring, barring a complete let-down on the part of the managements of the other local banks where they are not providing reasonable and good service to their customers. That would not be a raid.

Q. That would not be a raid?

A. No.

Q. In your opinion if a system of strong, sound, healthy banks had existed during and prior to the Great Depression for the bank failures during and prior to the depression, or in that neighborhood of time, would there have been any need for the FDIC?

A. Prior to 1933?

Q. Yes.

A. Well, I would say that the FDIC, had it been in existence during the 1920's, would have been a very busy [784] place. Presumably some of the reasons for the many failures might have been eliminated by virtue of the existence of an FDIC.

Does that answer your question, sir?

Q. Tell the Court whether or not in your opinion too much competition between banks in the areas where competition took place before the formation of the FDIC may have led to the situation which you have described.

A. It did lead to many failures in my judgment. While I was examining banks as an assistant examiner in 1929, 1930, 1931 and 1932, on many occasions I assisted during the examination of a country bank located in a community that was

served by two or three banks that did not have sufficient banking business to support more than one bank.

The result was that there were too many banks in a specific community. Competition was, of course, outstandingly active. Of course there were factors other than merely the competition there. We had an over-banked situation.

Answering your question to better advantage, during that period banks were paying interest on demand deposits, which of course is now illegal, as a competitive weapon. They were paying very high interest rates in many instances on time money.

They were making stock market loans galore, partly because [785] of competitive influences, certainly not solely because of that. Yes, it was a highly competitive area; and in part, many of the problems grew out of the fact that competition was entirely too active.

Q. As a result of that experience of competition being too active, was anything done by way of regulation of the fields in which competition could take place?

A. Well, let me say this, that the Banking Acts of 1933 and 1935 contained many restrictive statutes that were hoped to be of a character that would eliminate some of the weaknesses that were obvious to all of us prior to the Big Depression.

I am not sure that I fully have the gist of your question.

Q. My question is: Did those resulting regulations in any wise limit the field of competition?

A. Oh, yes, they very definitely did.

Q. The banks that carry insurance on deposits with the FDIC: Do they pay premiums for that purpose?

A. Yes. Each insured bank pays one-twelfth of one percent per annum of its average deposits to the Federal Deposit Insurance Corporation. Then, after meeting all losses and the expenses of the Corporation 66⅔ percent of the remainder is rebated to the banks.

Q. That method of assessing the cost of operating the [786] FDIC: Tell the Court whether or not in your opinion that is favorable to big banks or small banks.

A. A large bank naturally has a bigger percentage of its deposits from depositors who have individual accounts in ex-

cess of $10,000. It is estimated on the basis of a very close check in 1958 that about 54 percent of all of the deposits in insured banks are covered by the $10,000 insurance coverage.

However, a small bank would find that in excess of 90 percent, or possibly in excess of 95 percent—and I have seen instances where 100 percent—of the deposits in the bank were from depositors in amounts of $10,000 or less; so that the insurance provided by the FDIC gave 100 percent insurance to the depositors of that bank; whereas on an average, 54 percent of the deposits in banks are insured, and in very large banks the amount of insurance coverage might range from 20 to 25 percent of the overall deposits.

So that there is definitely—if you want to look upon it that way—some weight of favor on the part of the smaller banks in that more of their deposits are insured.

Q. Now, Mr. Jennings, I would like to ask you if, based upon your experience which you have testified about, and your familiarity with the situation in Lexington, Kentucky, and from your examination of the documents which have been filed in this case, whether or not in your opinion there was [787] any need for a bank the size of the merged bank in this community?

A. In my opinion there is a need for a bank the size of the merged institution, the First Security.

Q. If a community does not have a bank of sufficient size to meet the needs of the larger industries and businesses of that community, what has been the result of such a situation from your experience and observation?

A. Inevitably the larger borrowers will either seek loans elsewhere, or working through their banker will obtain the credit sought by means of a participation with one or more larger banks located elsewhere.

This, of course, tends to take the earnings on the borrower's loan out of the community. I have seen instances where larger business concerns in a community that does not have a bank large enough to serve it ultimately find their way to the larger bank in a city outside of the community—feeling that they can receive better service. And the amount of business that would be done with the local bank would be restricted primarily to a payroll account, a negligible amount of the business.

That is not good for the bank or the economy of the community.

Q. Based on your experience, tell the Court what effect, [788] if any, does the capital structure of a bank have upon its ability to attract deposits from large depositors such as national concerns?

A. It has a great weight with large depositors. All of the large corporations of the country review a bank's statement of condition with care before depositing an amount greater than $10,000 in the bank. If the deposit is to be a large one, greatly in excess of $10,000, in many instances the large corporation will send out a questionnaire to the bank or banker to find out more about the condition of the bank.

I can assure you that corporate treasurers do not wish to be caught with a large deposit in a bank that for any reason might fail. So they do place great weight on the capital structure and the condition of the bank.

Q. In calling your particular attention to the resulting change in the capital structure of the merged banks from—well, say, comparing the old First National with the merged First Security—what effect if any upon the ability of a bank to attract these larger accounts of national concerns has the merger had?

A. I think it has enhanced the ability of the merged bank quite substantially. The First National Bank had total capital funds in the neighborhood of $5 million prior to the merger. The merged bank has total capital funds somewhat in [789] excess of $8 million, and that is important to larger depositors.

It has increased the competitive ability of the merged bank in the area of large depositors.

Q. If the First Security National Bank and Trust Company is able to attract larger deposits from such potential customers, in your opinion, would that increase of business come at the expense of the smaller banks in Lexington?

A. Not in my opinion. The really large depositors are unlikely to deposit sums of consequence in the smaller banks. It is not truly their competitive field. I do not think it will harm them at all.

Q. They might, might they not, attract some deposits from customers of that type?

A. Oh, I am sure they will.

Q. But your testimony is directed to attracting larger deposits from customers of that type?

A. Well, it will enable the merged institution to attract much more effectively such deposits. So far as the smaller banks are concerned, as I stated, it is not truly their field—although now and then they would receive smaller deposit accounts from such concerns in my judgment.

Q. Now, directing your attention to the correspondent bank field, based on your experience, would you say that small- [790] town banks that are looking for a city correspondent bank would pay much or little attention to the size of a city bank which they were considering for a correspondent?

A. They pay a great deal of attention to the size of the institution, its capital structure, its total deposits, its lending ability.

Q. Why do they do that?

A. Well, there again a small commercial bank, located in Central Kentucky, would not wish to have an active and large correspondent relationship with a bank in Lexington that did not have a sizeable capital structure. They are fearful that the bank would not be able to really do a first-class job of servicing the account, giving them the various services that they require as a country correspondent.

And, of course, they are interested in capital adequacy and soundness and the service that can be given them as country correspondents in all banking areas.

Q. In addition to safety and soundness, would they be interested in the field of participating loans in a bank which had a larger lending limit?

A. Yes. They would do that frequently and they would feel more comfortable with a bank having an $8 million capital structure than they would with a $5 million capital structure. We must bear in mind that, in the [791] correspondent bank field, we have very large banks around the country that are competing tooth and nail all the time for that business; and

$3 million of additional capital structure helps the merged bank substantially in that field.

Q. While you were in the Office of the Comptroller did you participate in or take part in the preparation of any studies regarding concentration or regarding that field in banking, in reserve and central reserve cities, and cities having a population throughout the country of more than 50,000?

A. Yes, I did.

Q. Were those two separate studies made, first of all, of banking in reserve and central reserve cities, and also of cities having a population throughout the country of more than 50,000?

A. Yes. Two separate studies were made. Both were made under my supervision. The studies were made early in 1957. The results of the study involving banks in cities having populations of 50,000 and over were condensed and appeared in the 1956 Annual Report of the Comptroller of the Currency to the Congress.

Q. For what purpose were those studies made?

A. We wished to have a better feel of our banking make-up in such cities. We were thinking of competition in those [792] cities. We were quite intimately familiar with the nature of competition in all—or at least most—of the cities. So we just wanted to see what the physical banking make-up was in cities of 50,000 and over.

Q. I would like now to call your attention to Defendant's Exhibit No. 88.

Mr. ODEAR. Would the Clerk show the Court that.

By Mr. ODEAR:

Q. What does that exhibit purport to show?

A. The exhibit shows each city having a population of 50,000 or more; the number of banks at the end of 1946 in each such community; the number of banks at the end of 1956; the percentage of resources held by the largest bank in each community at the end of 1946; and at the end of 1956; the percentage of resources held by the two largest banks in each community at the end of 1946; and at the end of 1956; the percentage held by the remaining banks in each community over that ten-year period; and then, finally, the total resources of all com-

mercial banks at the end of 1946 and at the end of 1956 in each of the communities.

Q. Would you summarize briefly for us the results of that study as shown by that exhibit?

A. 224 cities——

Q. Are we now talking about 88 or 89?

[793] A. I do not have mine numbered. I am using the schedule that pertain to cities of 50,000 and over.

The COURT. I think he has been discussing Exhibit——

Mr. ODEAR. 89.

The COURT. Certainly it is not Exhibit 88.

Mr. ODEAR. No, sir, he wasn't. I was lost, Judge.

The COURT. I haven't been following him at all.

By Mr. ODEAR:

Q. Is it 89?

A. Possibly if you will give me 89——

The COURT. Mr. Clerk, you may help me there. I will have to look at these exhibits.

Mr. ODEAR. The one we are talking about is 89.

The WITNESS. The third page of it.

By Mr. ODEAR:

Q. Going back again, if you will, would you summarize for us the results of your study as shown by Exhibit 89?

A. I will be glad to. I might say that I was commenting on page 3 of the exhibit initially. A recapitulation of this study shows that out of 224 cities encompassed in the study, 43 percent of those cities were served by a lead bank having 50 percent or more of the total banking resources of that community. That comes under the recapitulation on the schedule that I have.

[794] Q. That is page 2 of the exhibit, is it not?

A. Yes. In other words, the grand recapitulation shows that in over 50 percent, at the end of 1956 there were 96 cities served by a lead bank having 50 percent or more of the banking resources in such cities. That represents 43 percent of the 224 cities.

Then, just backing up a bit, there were 94 cities, or 42 percent of the 224 cities, that were served by a lead bank having

35 percent to 50 percent of the total banking resources of those communities.

Q. Directing your attention to the 96 cities in the United States out of 224 where the lead bank had over 50 percent of the banking assets of that particular city, tell the Court whether or not, based on your experience, there was ample competition between commercial banks in those cities.

A. At the time I caused this study to be made, it was my opinion that there was adequate banking competition in each of those cities.

Q. Has your opinion differed from that at any time?

A. No.

Q. That study was directed to cities of a population of over 50,000 in the United States, was it not?

A. That is correct, yes.

Q. Go back to the one I was attempting to discuss first. [795] That is a similar study made of central reserve cities in the United States.

Mr. ODEAR. That is No. 88, your Honor.

A. This study involved only those cities having banks classified as reserve or reserve city banks.

By Mr. ODEAR:

Q. Would you summarize the results of that study as shown in that exhibit for the Court?

A. Yes. At the end of 1946 there were 53 such cities. At the end of 1956 there were 54 such cities. Just addressing myself to 1956, there were 718 commercial banks in the 54 cities. They had total resources of $117 billion, or 56.63 percent of the total assets of all commercial banks.

I might say that, in analyzing the data that is incorporated in this study, that six cities have lead banks having 60 percent or more of the total banking resources of those cities. Nine cities have lead banks enjoying 50 percent to 60 percent of the total banking resources in the particular city.

Twelve cities have lead banks that had 40 to 50 percent of the total banking resources of those cities.

If we just address ourselves to the cities that have a lead bank with 40 percent or more of the banking resources, we find that 40 percent of the 54 cities have lead banks that [796] have

40 percent or more of the total banking resources in their city, with 15 cities having lead banks that have 50 percent or more of the total banking resources in their cities.

Q. Based on your experience in those several cities where the lead banks had 50 percent or more of the banking resources held by commercial banks in those cities, state whether or not in your opinion there was ample competition between the commercial banks in those cities?

A. In my opinion competition was very keen and adequate in each of the cities.

Q. With respect to the ability of the largest bank in cities where large percentages such as those were held by the lead bank, do your studies show anything as to the ability of the largest bank to hold or maintain its relative position in competition with the smaller banks?

A. Yes, it very definitely does.

Q. What does it show in that regard?

A. May I address myself to the schedule setting forth details on banks in cities 50,000 and over?

Q. Yes, sir, if you will. That is back to Exhibit No. 89.

A. Yes. Out of the 224 cities that were involved in the study between 1946 and 1956, in 124 of those cities the lead bank lost ground during that ten-year period as [797] against the efforts of smaller competitors. It is true in 91 of the 224 cities the lead bank gained a little ground; but, generally speaking, a bank that has more than 40 percent of the banking resources of its community, and particularly when the percentage goes over 50 percent of the banking resources of the community, it seems to be almost inevitable that over a period of time the competitive efforts of the other banks make themselves felt; and that lead bank tends to lose its percentage of the total banking resources.

The percentage goes downhill far more frequently than it goes uphill when you are dealing in these higher percentages.

Q. Do you have any opinion as to the reason for the fact that in the majority of cases the lead bank is unable to maintain its percentage in competition with the smaller bank?

A. Well, I think it is due to two reasons. One is that the smaller banks are able to compete effectively, and then we must

consider this. A bank that has 40 percent or 50 percent of the banking resources of its community has a real job cut out for itself to maintain that percentage because it must obtain at least 40 percent of all new business that comes into the community and it takes indeed a superior management to achieve that.

Normally it is not done. The percentage almost [798] inevitably goes down. I don't want to belabor this question, but I noticed that the First National Bank of Lexington, over its history at one time long before this merger, had in excess of 50 percent of the banking resources of Lexington.

It lost that position over a period of years and was down to about 41 percent, as I remember it, at the time of the merger. I think the same forces came into play in Lexington as have come into play in many cities throughout the country, where a particular bank has a fairly large percentage of the banking resources of the community.

[799] Q. Do you have with you the annual report of the F.D.I.C. for the year 1960?

A. I do.

Q. I would like to ask you if you will take that annual report of the F.D.I.C. for 1960 and refer to Tables 15 and 16, which appear on pages 29 and 30.

Those are exhibits numbers 83–A and 83–B.

Looking at those tables, I will ask you to compare the national average of the number of banks per person with the number of banks per person in Lexington, and tell us if in your opinion five banks are sufficiently adequate to serve the needs of this community of Lexington?

A. Table Number 15—and I will only comment on the year 1934, which is the most recent year appearing in the table—reveals the fact that there were 18,918 banking offices at that time. There were 15,913 individual banks at that time. And the population per bank on a national average in 1934 was one bank for every 7,924 people and one banking office, including branches, for every 6,680 people.

Turning the page to Table 16, and dealing with the year 1959 only, there were total banking offices at that time of 24,242. There were 14,004 individual banks operating 10,238

branches. The population per bank had moved up from 7,942 in 1934 to one bank for every 12,823 [800] people, which, incidentally, is almost the exact figure for the city of Lexington.

In Lexington, we have one bank for each twelve thousand odd people.

Q. Following the merger?

A. Yes, following the merger.

And then the population per office at the end of 1959 throughout the country, one banking office for each 7,407 people. And I believe that that is somewhat comparable to Lexington. But my memory fails me on that point.

Q. Well, on that point, let me call your attention to Table 25 on page 48 of that report. And let's assume that following the merger that Lexington has five unit banks and fifteen banking offices. I will ask you to compare that with the national level on that particular set of facts.

A. Table 25——

Q. On page 48.

A. Yes.

Concerning myself with centers or metropolitan areas with populations of 25,000 to 100,000, which would be in the scope of Lexington——

Mr. ODEAR. If your Honor please, if you want to look, that is 83–D now that we are referring to.

The COURT. Thank you.

[801] Go right along, Mr. Jennings. I want to hear what you have to say. At an appropriate time I can check it.

Incidentally, I note here some of these figures on this exhibit have been revised and probably are not exactly as he gives them.

Mr. ODEAR. Yes, sir.

The COURT. So, I don't want to stop to check on those things. I want to listen to what you have to say.

The WITNESS. Very well, sir.

By Mr. ODEAR:

Q. Do you have in mind the question that I asked you?

A. As I understood it, you wished me to compare the data appearing in this table with the Lexington situation.

Q. That is right. Assuming that after the merger that Lexington has five unit banks and fifteen banking offices.

A. Limiting myself to centers or metropolitan areas having populations of 25,000 to 100,000 people, which would be within the scope of Lexington, there were 860 banking offices serving such communities. Forty of the communities were served by two banking offices. 120 of the communities were served by three banking offices. 148 of the communities were served by four banking offices. 80 of the communities [802] were served by five banking offices. 132 were served by six banking offices.

Again 132 communities were served by seven or eight banking offices. And 208, which is the remainder of the communities in this category, were served by nine to nineteen banking offices.

Now, considering that Lexington has a population of 65,000 and in its trade area, let us say, a population of 130,000, but limiting it to Lexington, with five unit banks and fifteen banking offices, Lexington is very well served in this range, because, as I pointed out, there are many, many communities in the size range of Lexington that are served by a far lesser number of banking offices.

Q. Mr. Jennings, in your preparation for testifying in this case, have you examined charts and tables showing the loans, deposits, and total resources of all Lexington banks for each year for the past thirty years or so?

A. Yes, I have.

Q. What conclusion do you draw from your examination of those figures as to whether or not the merged bank in Lexington will have any ability to preclude the other local banks from effectively competing with it?

A. In my judgment, the figures prove rather conclusively that the merged bank will not be able to preclude [803] the other banks from growing and obtaining their share of the banking business. The figures are quite clear there in that area to me.

Q. From the actual new loans, deposits, and resources acquired by each Lexington bank for the fifteen-year period from 1945 to 1960, what conclusion do you draw with respect to the ability of the smaller banks to compete effectively with First Security?

A. The smaller banks have grown, they have prospered, and in my opinion they have been able to compete effectively.

Q. Now, from the experience of the other local banks in competing with the First Security since the merger on March 1, 1961, what conclusions, if any, do you draw with respect to the ability of the other local banks to compete with the First Security?

A. I noted with a great deal of interest that during the year 1961, the commercial banks in Lexington increased their deposits $24,500,000.

The merged institution, First Security, obtained in round figures $10 million of that deposit increase. And the remaining smaller competitive banks obtained approximately $14½ million of that deposit increase.

So it is quite clear that the four smaller banks in Lexington had a very fine year deposit-growth-wise. And [804] to me it is very clear they were able to compete effectively against the merged institution.

Q. In your studies, did you see a statement of the number of times that the new increased lending limit of the First Security Bank has been used since the consolidation on March 1, 1961?

A. Yes, I did. And I thought that it had been used in a very fair number of instances.

Q. What, if anything, does that indicate to you as to whether or not there was a need for a bank in Lexington with the increased lending limits and the ability to lend up to those limits?

A. To me it proves conclusively that a need existed prior to the merger which is now being satisfied in a fair number of cases.

Q. From your knowledge of the geographical location of Lexington, its rapid growth industrially and commercially and in population in recent years, and the ratios of local banks' loans to deposits, and the area from which it has drawn correspondent bank deposits, what, if anything, do you conclude with respect to the need for additional lending funds to serve this community?

A. Well, I find that the local banks have been rather fully loaned, and, in my judgment, in need of additional [805] deposits.

It is not possible to lend money without first getting the deposits to do it with. And I think the figures prove quite conclusively that additional deposits would be very helpful to the banking situation and to the economy of Lexington.

Q. Considering again all those factors, what, in your opinion, would be the prospective ability of the First Security to obtain additional correspondent banking deposits in the event this case is ultimately determined in favor of the merger and if the First Security then actively and aggressively seeks correspondent bank deposits?

A. The merged institution will occupy an improved position in one of the most highly competitive areas in banking today. That improvement probably means more than one might think for that three million dollars of additional capital and the additional deposits that have gone into the merged institution.

I believe in American banking today that correspondent banking is one of the most highly competitive. Every large bank is out visiting the country correspondents and doing a good job of serving those country correspondents.

Again I don't want to belabor the point, but I would say that the merged institution is in a vastly improved [806] position to increase the amount of deposits that are no doubt available in the central Kentucky area and other geographic areas of Kentucky where correspondent banks, prospective correspondent banks, are located.

Q. Based on your experience, tell the Court whether or not in your opinion the merger will have any adverse effect upon the ability of any local credit worthy borrower, whether large or small, to have his credit needs satisfied in Lexington?

A. None whatsoever in my judgment.

As I remember it, the smallest legal lending limit in Lexington at the present time is $75,000 to any one borrower. And that goes on up to the $500,000 legal lending limit of the merged institution. There are five banks in the community with the ability to lend amounts ranging from $75,000 on up to $500,000.

I can't see any reason whatsoever why a local borrower or a borrower from outside, if he has a license or a reason, I should say, for coming to Lexington to borrow money—I can't see why

there are not an adequate number of choices in five well-run commercial banks.

Q. In your opinion, how many bank choices should a prospective borrower have before he can ascertain fairly [807] and reasonably whether or not his loan is creditworthy?

A. I can only answer that question on the basis of my experience. I would say in most instances two choices are sufficient. But, on the other hand, I personally would prefer to see three choices.

I think that any borrower who is turned down by three well-run local banks has slight likelihood of obtaining that loan at a fourth local bank. It goes almost beyond the realms of probabilities, because, number one, banks want to make loans. Banks have good lending officers. And when they turn down a loan, it is turned down for a reason, a good reason.

And now and then, of course, on the second and third try, the loan may be granted; but again on the basis of my experience, quite frequently when the loan is granted by the second or third bank, it is on a somewhat different basis than was offered to the bank that initially turned down the loan.

Some security has crept into the picture or an endorsement. But it is fine to have three. That, to me, is completely adequate.

Q. Would you say the situation, then, is adequate in Lexington?

A. Yes, I would.

[808] Q. You have already talked to us about the effect of this merger as shown by past performances from March 1, 1961 when the merger took place, up to date.

I will ask you now to give us your opinion as to what will be the effect of this merger in the future upon competition between the First Security National Bank and Trust Company and other banks in Lexington based upon your experience?

A. I think competition will be intense. I would not be at all surprised to see the four smaller banks gain a bit percentagewise against the First Security. Certainly the First Security will have to go all out to avoid that. The banking field in Lexington is very adequate to support all five banks in their various size ranges.

Q. By reason of this consolidation, in your opinion does the First Security National Bank and Trust Company have any power to exclude any other local commercial bank from successfully competing with it in any field or line of commercial banking?

A. No. It has no power to exclude the other banks from any commercial banking endeavor.

Q. In your opinion, as a result of the merger does the merged bank have the power to dictate to other local banks and require that they follow the practices, policies, or [809] prices that First Security might desire to impose on them?

A. Absolutely no.

Q. By reason of this consolidation, does the merged bank in your opinion have the power to cause customers that other local banks now have to leave the other local banks and to do business with First Security, to require them to come to it to do business?

A. In my opinion, no.

Possibly that is a question that should be elaborated on a little bit.

Q. All right. Will you elaborate on that subject?

A. Basically, no; but you can rest assured that the officers of the First Security are going to be courting customers of the other four banks just the same as the officers of the four smaller banks will be courting the customers of the First Security.

And over a period of time, it is inevitable that now and then the First Security may get a customer away from one of the other four banks; but, by the same token, you will find it is inevitable also that the other four banks will occasionally be getting customers away from the First Security. It is just part of the interplay in competition.

Q. Does a situation still exist where a customer having a free choice, as they do have, can find his [810] banking needs generally served by other banks in Lexington?

A. To my mind, the answer is yes; they have five choices.

Q. By reason of this consolidation, tell the Court whether or not in your opinion the merged bank has any power to force or compel new customers which have not heretofore done business with any of the banks to come to it rather than go to the other banks?

A. You have used the words "force or compel." In my experience in banking I have never run into a situation where a bank has been able to force or compel a depositor to bring his business into a bank. The only time that a banker finds himself in a position to force or compel is in a rare instance in which he expects to foreclose.

Banks cannot force or compel. And they do not. They would be ill-advised to ever attempt it. They would simply lose business in the process.

Q. Mr. Jennings, are you familiar in general with the bank merger act of 1960?

A. Yes, I am.

Q. What factors are directed to be considered by the Comptroller in approving or disapproving an application for merger under that legislation?

A. There are a number of banking factors: the [811] competency of management, the condition of the bank, its capital adequacy, the so-called convenience and needs in the community.

The Comptroller also has to consider in relation to all of the banking factors what the competitive effect may be in the community. And then wrapping all of the banking factors up with the competitive factor, he has to make a determination as to whether the merger, if approved, would be in the public interest.

Q. Based on your studies in connection with the situation in Lexington and based on your experience, tell the Court whether or not in considering each and all of the factors that you have just described, including both the banking factors and the competitive factor, tell the Court what your opinion is as to whether or not this merger is or is not in the public interest.

A. I have considered all of the factors that are involved in this merger, the banking factors, the competitive effect, and the public interest; and it is my strong view that the merger is in the public interest of Lexington, and that it should have been, as it was, approved by the Comptroller of the Currency.

Mr. ODEAR. You may cross-examine.

[812] Cross-examination by Mr. WILLIAMS:

Q. Mr. Jennings, in your experience, isn't it normal following a merger for there to be some attrition in business of the merged institution?

A. Yes. It frequently happens.

Q. Do you think that is normal here in Lexington?

A. Well, I would say—let me answer it in this way: I believe that there would be a very modest amount of attrition that the First Security would have to contend with in connection with its merger. Yes, there would be some. I think it would be rather modest in this case.

The COURT. I want to hear the question read.

(The question was read by the reporter.)

By Mr. WILLIAMS:

Q. Mr. Jennings, wouldn't it follow that the percentage increase since the merger of the competing banks may be due in part to the normal attrition that follows a bank merger?

A. In a very modest degree there would no doubt be some truth to that statement. But we must remember that the First Security did not have a large volume of correspondent banking business.

[813] Generally speaking, the attrition is more severe in the correspondent banking business than elsewhere. Elsewhere the attrition takes place generally in a very small number of large deposit accounts.

Q. Do you think the pendency of the lawsuit would have some bearing upon the relative change in position of banks in Lexington?

A. I have difficulty trying to determine what you mean. What kind of a lawsuit?

Q. The lawsuit in this case. Do you think that has some bearing, or do you not, on the changes in the relative position of the banks in Lexington following the merger?

A. Locally, no.

So far as the correspondent banking position is concerned, there might be some banks that would be reluctant to open up a correspondent banking relationship with the merged institution until this case had been settled.

Q. Mr. Jennings, do you know the amount of business that the First National has from its correspondents?

A. I did know, but I didn't charge my memory with it. I would have to check.

Q. I believe you testified, did you not, that the merged institution would be in a better position in your judgment to attract additional correspondent accounts?

[814] A. That is correct.

Q. Do you think that is an advantage to the consolidated institutions?

A. I very definitely do. I think that Lexington is becoming all of the time more and more of an industrial community rather than relying so completely on tobacco. And I think that it should be more of a leader in the financial world than it has been in the past. As a community grows industrially, it should grow financially. And so I think that there is just no doubt about the fact that Lexington needs an institution that can be looked up to by the correspondent banks that it might normally expect to serve but which over the years have been served by other correspondent banks, say Louisville or Cincinnati, wherever it might be.

Q. Mr. Jennings, suppose as a result of the consolidation First Security has an advantage that it did not previously have, will that not work to its benefit vis-a-vis the local banks in Lexington also seeking to obtain correspondent bank business?

A. As I understand your question, you say the First Security would have an advantage over other local banks in obtaining correspondent banking business?

Q. I am asking you if you think that would be the [815] case?

A. I would say that the First National Bank prior to the merger had an advantage over the other banks. I think it has no doubt increased its advantage slightly. But the amount of correspondent banking business that the other four banks can attract will never be very substantial unless those banks do become larger than they are now.

So, it is not an area they have been competing in effectively at all. And I think what we have done here is provide Lexington with a bank that is able to more effectively compete for the business.

I don't really believe we have changed the position of the four smaller banks as regards their ability to get correspondent banking business.

Q. Mr. Jennings, you referred earlier, I think, to Exhibit 89 that reflected a study conducted by the Office of the Comptroller of the Currency on the relative position of banks in various cities of the United States, did you not?

A. I did.

Is this the schedule dealing with cities of fifty thousand and over?

Q. Yes.

A. Yes.

[816] Q. Does that study indicate to what extent the institutions with more than 50 percent of the business in the community is the result of a merger?

A. It does not cover that phase of it.

Q. Does it show the relative size of the second largest competing institution?

A. Yes.

As I remember the schedule—and possibly I should refer to it—it shows the percentage of the banking resources held by the largest bank in the community. And it then shows the percentage held by the two largest. So, by a matter of simple subtraction, you could find out the percentage that was held by the second largest.

Q. Does it reflect whether or not one or more of the institutions are a part of a bank holding company?

A. It does not. It was not prepared for that purpose.

Q. That is an important factor, is it not, in competition among banks?

A. That is a broad field.

Q. I just asked you if you though it was important.

A. I want to be sure that I understand your question.

May I have that question read?

[817] The COURT. Yes.

(The question was read by the reporter.)

The WITNESS. It is a very difficult question to answer. We have wide areas of this country that are not served by holding companies at all. We have other areas that are served by bank

holding companies. The Marine Midland Corporation in New York State, for example; there I would say that the Marine Midland Corporation, its subsidiary banks through New York State and in New York City are highly competitive.

But I can assure you that they are met by banks that are not tied into holding companies in any way by fierce and adequate competition. Holding company banking as such has to be broken down into the areas where the holding company is operating. And it has no unique competitive qualities or forces all of its own.

By Mr. WILLIAMS:

Q. Mr. Jennings, the chart does not reflect, or does it, the nature of competition in the immediate area of the banks in these selected cities?

A. No, it does not.

Q. Don't you think that would have some bearing upon the competitive situation?

A. You may rest assured that in any analysis of a [818] schedule of this type that each of the situations have to be considered as a separate entity. And location is frequently important.

Q. So, it is rather difficult, is it not, to draw general conclusions from a chart of this nature, when you say you have to consider the individual situation?

A. Well, I don't think it is quite correct to say that you cannot draw some overall general conclusions such as those that I drew in commenting on the schedule.

I think general conclusions may be drawn. But when one makes the general conclusion or relies on averages in any field, it is always subject to individual analysis, of course.

Q. Thank you.

Now, Mr. Jennings, a bank can increase its capital structure by means other than merger or consolidation, can it not?

A. Oh, yes.

Q. What has been the experience of your bank down in Dallas in the way of increasing its capital structure? How have you gone about it?

A. We have increased our capital structure on a number of occasions through selling new stock, of course giving the present

shareholders their pre-emptive rights to [819] purchase the new stock. Then we have increased the actual capital accounts from time to time by means of a stock dividend. That, of course, did not serve to bring any new money into the capital structure.

Q. So, if a bank needs to increase its capital structure in order to better serve the community, it can do so by means other than merger with another institution, can it not?

A. It can. But it is not quite as simple as that.

Q. It is easier to merge, is it not?

A. No, I didn't mean that.

Our bank in Dallas was growing very rapidly. It became under-capitalized. Therefore, it was quite easy to go into our capital market, primarily the Southwest, and get additional capital, because our bank was growing and it was becoming under-capitalized. But to allude to that with the possible inference—and possibly I am unjustified in inferring that—that the capital of the First National might have been increased similarly, you would have to make a separate analysis, I assure you, as to whether it could have followed a similar tack.

Q. But there are other means?

A. Oh, absolutely.

Q. Mr. Jennings, in order for a bank to increase [820] the size of its loans, it must first obtain deposits; is that correct?

A. In the first instance, a bank has its capital structure available for lending. And that doesn't make very many loans. So, of course, the bank has to have deposits to make loans.

Q. And if First Security is able to succeed in attracting more deposits from correspondent banks, it would be in a better position to make more loans, would it not?

A. Yes, it would.

Q. Mr. Jennings, banks do take customers away from each other without engaging in raids as that term was mentioned earlier; isn't that correct?

A. I will have to have that read back.

(The question was read by the reporter.)

A. I would say to the best of my knowledge, it is the only method that I have ever known of whereby one bank would take away a customer from another bank.

I have never seen a so-called "bank raid". I just don't know what that means, because I have never seen one.

Q. It is a fact, is it not, that banks do frequently take customers away from each other?

A. Absolutely. We are trying by means of giving [821] better service, having a better bank, having better personalities, whatever means are at our disposal, to obtain the business of our competitors. It goes on unceasingly every day.

Q. If a bank has a larger lending limit, that enables it oftentimes to take away customers of other banks?

A. For very large borrowers that cannot be served by other banks in the community by virtue of that lending limit I would say that the large bank definitely has an advantage in that field. But only in that limited number of instances.

Q. If a bank has wider range of services to offer than another bank, that gives it an advantage in obtaining customers from another bank, wouldn't you say?

A. Yes. But I would blame the other banks for not seeing to it that their range of services were competitive.

It is true that if you get into an area of a large lender—and that is, in a way, a service—you exclude to the smaller banks, let us say, the very large corporate borrowers. But when you talk about services generally, the small banks can provide good services. And if they do not elect to, they lose business by default.

Q. Do you think it is important in modern day banking to have automated equipment, Mr. Jennings?

[822] A. For the larger banks, without question, yes.

Q. That is quite expensive, is it not?

A. Initially it is very definitely expensive. The only way it becomes non-expensive is as a bank continues to grow, it can do so without adding to the number of its employees, we bankers hope, and ultimately it becomes not quite as expensive.

Q. What banks in Lexington, in your opinion, would be in a position to put in automatic equipment?

A. The First Security would be.

Let me point out this: that in many areas of the country, the smaller banks are banding together to obtain their own electronic equipment. There is a bill pending in the Congress

that would eliminate, as I understand it, any antitrust aspects of smaller banks banding together to buy as a unit electronic equipment that could then be used for their mutual benefit.

I think it is only a short time away when the so-called advantage as it now may appear will rest with the larger banks. I would say that it is an advantage. It is a necessity. But it is a very expensive situation for the larger banks right now. And I know that from personal experience.

Q. Would you say, Mr. Jennings, if a number of smaller [823] banks were permitted to get together to buy equipment, they would be doing so in order to meet the competition of larger institutions?

A. To better compete and to give better service. That is exactly the reason for it.

Q. Mr. Jennings, I would like to go back to the field of competition in banking that you testified about earlier.

After you left the Comptroller's Office, did you learn anything new about the nature of the competition existing among the banks, commercial banks?

A. Yes, I did. It is only human that when you leave one area of endeavor and go into the direct banking field, that you will find out something new. And in the area of competition, the only thing that I really learned was the fact that banking was even more competitive than I had thought it was while I was a bank supervisor.

Q. Mr. Jennings, would it be correct to say that commercial banking is one of the most intensively competitive fields that you know of?

A. I think it is.

Q. That competition take many forms, does it not?

A. Well, it takes many forms in respect to the various services that are being offered. But they are the usual forms. [824] There is nothing new tomorrow generally speaking that wasn't present today or last year or five years ago, unless it involves electronic equipment that was not in existence.

Mr. WILLIAMS. Your Honor, it is just a little after 12:00. Could we have a recess at this time?

The COURT. I think so.

The Court will recess until 1:30.

(Whereupon, at 12:05 o'clock p.m., the Court recessed to reconvene at 1:30 o'clock p.m.)

[825] *Afternoon Session* (1:30 p.m.)

The COURT. You may proceed.

Whereupon, L. A. JENNINGS the witness on the stand at the taking of the noon recess, resumed the stand, was further examined and testified as follows:

Cross-examination (resumed) by Mr. WILLIAMS:

Q. Mr. Jennings, in your testimony this morning you referred to Defendant's Exhibit 83-D. Would you locate that, please.

Mr. Jennings, if I remember your testimony correctly, you referred to the column 25,000 to 100,000, did you not, and read some figures from that?

A. That is correct.

Q. Do you know the population of Fayette County?

A. Yes, I do.

Q. Would it not be correct that the appropriate figures in this instance should be in the 100,000 to 500,000 category, since this applies to metropolitan areas?

A. Well, if we approach it mathematically, I would believe that Lexington and Fayette County would more nearly [826] fall within the 25,000 to 100,000, than the 100,000 to 500,000. 500,000 is a pretty big figure. That is a matter of opinion, I suppose.

Q. It is a fact, is it not, that the metropolitan area—this chart deals with metropolitan areas—in Fayette County is 130,000 population?

A. That is correct.

Q. Would you look across that chart, and dealing with the 100,000 to 500,000, and state the number of banks that have five offices out of 3,024?

A. Yes, I will. There were five communities that had five banking offices each in that category; six communities with six banking offices each; thirty-five communities with seven or eight offices; and 664 communities in the 100,000 to 500,000 category having nine to nineteen offices.

Then going on, they have 2314 communities served by twenty or more offices in that category.

Q. Do you know how many banking offices are located in Fayette County?

A. I know the ones that are in this city. Within the county, no, I would be guessing—not very many more than the fifteen banking offices that are in this city.

Q. Mr. Jennings, I believe you testified earlier that, based upon some information that had been made available [827] to you, you had noticed that First Security had obtained a number of loans of larger size than either of the merging banks had. Is that correct, sir?

A. That is correct.

Q. Do you know whether or not some of those borrowers obtained larger sums of money from the two consolidating banks and other banks in Lexington than was obtained from the consolidated bank?

A. I would have to answer that no, I do not know.

Q. Is that based upon sufficient familiarity with the documents?

A. I am not sure that that information was provided in the charts. If it is, it has slipped my memory.

Q. Very well, sir. Mr. Jennings, do you know the lending limit of First National prior to the merger?

A. Yes; $250,000.

Q. Did you know the lending limit of Security prior to the merger?

A. Yes, I do. I believe that prior to the merger, under Kentucky statutes, it was $300,000.

Q. The information I have is $440,000.

A. All right.

Q. With a total of $690,000. Do you know the lending limit of the combined institution?

[828] A. At the present time?

Q. Yes.

A. $500,000.

Q. And that is only a slightly larger lending limit than Security had alone. Is that correct?

A. That is correct. Would you care for me to comment on that?

Q. Just answer the questions, if you will, please, sir.

A. Very well.

Q. So from the viewpoint of customers seeking money from banks in Lexington, at least the combined lending limit of the two institutions offered a greater limit than the lending limit of the single institution. Is that not correct?

A. Only theoretically; true, theoretically only.

Q. Would it be correct to say, Mr. Jennings, that any increase in lending capacity would not be well-founded unless there is an accompanying sizeable deposit?

A. Are you referring to the individual loans that might be made in large amounts? Or just aggregate total of loans?

Q. Generally.

A. That is true. Additional deposit growth would be required to permit any substantial growth in loans. There is room at the present time for some growth in that area.

Q. Mr. Jennings, I believe there was testimony this [829] morning about the increase in capital structure of the consolidated bank, from, I believe, $5 million for First National, to $8 million in the consolidated bank.

A. Yes.

Q. Isn't it true that what is really important is the ratio of capital to assets or capital to deposits of similar ratios rather than just absolute figures?

A. Both are important.

Q. If the bank has a total capital structure of, say, $5 million and total assets of $10 million, it is in a better capital position than another bank which has a total capital structure of $8 million and total assets of $100,000,000, even though the second bank has a larger capital structure?

A. We have to assume capital adequacy. You are getting into two areas. Obviously the capital structure of a bank must bear a reasonable relationship to its risk assets. If that goes beyond a reasonable point, the bank either has to slow down on its lending or go to its capital market and add some more capital, or slow down on the lending and wait until retained earnings have assisted in increasing the capital structure.

Q. Mr. Jennings, isn't it true that when banks merge they not only increase their capital in some instances, but they also acquire assets which to a degree offset the increase [830] in capital?

A. From a capital adequacy standpoint, that would be true. It could have an effect there.

Q. But if the bank chooses to increase its capital structure by the sale of stock, you don't have the same problem, do you?

A. When you increase by bringing in new capital, obviously you are not bringing in ready-made loans to add to the loan total.

Q. Mr. Jennings, in your opinion is vigorous competition between strong aggressive and sound banks highly desirable?

A. I would say vigorous competition is desirable in banking, not unsound competition, but vigorous competition.

Q. Mr. Jennings, I would like to show you the report of the Senate, the 86th Congress, the First Session, the report of the Committee on Banking and Currency on the subject of the regulation of bank mergers.

I believe you testified earlier that you were quite concerned with that problem while you were in the Comptroller's Office.

A. With capital adequacy or with the Bank Merger Bill of 1960?

Q. With the Bank Merger Bill of 1960.

[831] A. Yes. I was very active in connection with that bill.

Q. I would like to show you the report of the Senate and ask you some questions, if I may. Mr. Jennings, I wish you would turn to page 8 of that report and read the paragraph which is marked, and I will ask you some questions.

A. "The large numbers of mergers in recent years, the vast numbers of resources involved in these mergers, and the increases in the size of the largest banks, particularly those which have grown through mergers, all give rise to concern for the maintenance of vigorous competition in the banking system and in the industry and commerce served by the banking system.

"The reduction in the number of banks and the loss of competition between merged banks also give rise to concern. There are differing views about the effect and the significance

of the mergers which have taken place, but there is general agreement that legislation providing for uniform and effective regulation of mergers is required for the future.

"The testimony before the committee showed the extent to which these developments have gone. A review of this evidence demonstrates that there is cause for concern and need for legislation which will provide a basis for effective regulation of bank mergers."

[832] Q. Mr. Jennings, in your judgment was one of the reasons for the concern of Congress the high degree of concentration existing in banking in some of the cities listed on the chart you referred to earlier?

A. No, I don't believe there was a concern for the concentration, as you phrase it, on the part of the Congress.

Do you want me to give my reason?

Q. Yes.

A. I believe that there had been a large number of bank mergers. I don't believe there was any particular concern on the part of the Congress as to the mergers that had taken place up through 1959 or until the passage of the Bank Merger Act of 1960.

On the other hand, there had been a large number of mergers. There was concern that at some time in the future if a bank merger bill were not enacted setting forth the guidelines, conceivably in the future it might get out of hand.

Q. Isn't it true, Mr. Jennings, that Congress considered this problem a number of years before the Act was actually passed?

A. It certainly did. The Justice Department, as you know better than I, presented a bill to the Congress that would have placed all bank mergers under Section 7 of the Clayton Act.

[833] The bank supervisory agencies did not wish that method to be pursued, so the bank supervisory agencies presented their own bill at that time—one of the reasons being that you can't lick something with nothing. And if we hadn't presented our bill, the Justice Department bill could have won by default.

We didn't think that was the way to handle it. We thought that the bank supervisory agencies should be in the position of command in dealing with bank mergers.

So that is the way it started back in about 1955, and it went along for a number of years, with the Administration as such taking no specific position as to which side should win.

The bank supervisory agencies, as you know, finally won.

Q. That may be debatable, Mr. Jennings; but you are entitled to your opinion. Now would you turn to page 26 of that report and read the portion marked, please, sir—omitting the table.

A. "From 1950 through 1958, for example, the Office of the Comptroller of the Currency approved 731 bank mergers and consolidations involving in respect to banks absorbed total resources of approximately $11 billion. During the period from May 1950 to May 1955 that Office did not disapprove a single merger application on the basis of the need for competition.

"During the entire nine-year period the Comptroller [834] disapproved only 22 mergers because of such reasons. This is indicated in the following table."

The table I will omit.

> The Federal banking agencies plead that they had insufficient legislative criteria upon which to base disapproval of mergers, but their bill and their testimony in favor of it shows only too clearly that they have very little feeling for the need for competition.
>
> That is why giving the Attorney General a voice in the matter is an absolute necessity.

Q. Thank you. Mr. Jennings, while you were in the Comptroller's Office was it or was it not a practice to approve bank mergers without considering whether or not they would substantially lessen competition?

A. It was not. If you wish me to elaborate, I will.

Q. Just answer the question, please, sir.

A. Thank you.

The COURT. I would like to hear his elaboration, if he will offer it.

The WITNESS. The statement has been made that we approved mergers in the Comptroller's Office—and I assume that your question is wide enough to cover the other supervisory agencies—without regard to the competitive factors.

We did consider the competitive factors. It is [835] true that prior to 1955 the records show that we did not in any of the supervisory agencies in Washington—to the best of my knowledge—disapprove a single merger because of competitive grounds. But that as such is meaningless, unless we had a case before us that should have been turned down because of the competitive factors, and we did not in my judgment. So obviously we could not turn them down on that basis.

Starting in 1955, some cases did arise where it was necessary to say no to the merger applications because of competitive factors. And from 1955 on, each year there were a small number that were disapproved for that reason.

By Mr. WILLIAMS:

Q. Mr. Jennings, since you left the Comptroller's Office have you kept up with the reports that the Comptroller submits to Congress?

A. Through 1960, yes. The 1961 Comptroller report to the Congress is not yet out.

Q. Have you noticed in those reports any instance where the Comptroller of the Currency has denied an application to merge for competitive reasons?

A. No, but I would like to elaborate again.

Q. All right.

A. The Comptroller's Office followed a practice for [836] years of handling the denials on an informal basis. The denials that I have mentioned were not made public. Normally the applicants would come to the Comptroller's Office. We would review the whole situation and if we thought it was something we could not approve, we would advise the bankers not to file formal applications.

That was just as effective as a denial. We told them that we thought it was wholly unlikely that, if they formally filed, we could approve. They did not file. Therefore mention of disapprovals in the Comptroller's reports to the Congress for 1955 through 1960 I don't suppose makes mention of that fact.

But let me say this, that before Committees of Congress we were requested at various times—and I am sure you are familiar with this—as to whether our Office had denied mergers for competitive reasons. We said yes, and we were required to not

identify the turndowns as to the names of the banks, but to give the number of turndowns by years. That is a matter of record in testimony before Committees of Congress.

Q. Mr. Jennings, since the passage of the Bank Merger Act, the names of the banks applying for merger—at least, making formal application—are made known in the reports of the Comptroller, and he gives the reason for his approval [837] or disapproval, does he not?

A. That is correct. Under the Bank Merger Act of 1960 that is required.

Q. My question to you earlier was: Have you noticed a single instance since the passage of the Bank Merger Law that the Comptroller of the Currency has denied a merger on the grounds of competitive factors?

A. This would cover the period from, as I remember it, May 11, 1960—which is when I believe the Bank Merger Act of 1960 was enacted into law—through the end of the year. I do not remember in the annual report of the Comptroller for 1960 that he mentioned any denials.

I have a copy of the report here. I might have missed it. I do not actually know, although I doubt that there is any mention made of a denial in 1960.

Q. Mr. Jennings, when you were in the Comptroller's Office was it or was it not a practice to indicate in many instances to the applicant banks that you would look favorably upon the application before they even filed it?

A. Yes, there were instances where, after going into the facts—and bear in mind we were not uninformed generally about the particular banks that sought to merge. We were examining the banks. A national bank had to be involved or they wouldn't have been in our office seeking our approval. [838] In certain cases we indicated we could see no reason why a formal application should not be filed. We did not as such say, "We believe when you file it, it will be approved." That was out. But we did not see initially any good reason why the formal application should not be filed, but that didn't necessarily mean that when we got into all of the facts and all the details, that we would approve it.

Q. I believe, Mr. Jennings, you testified earlier that you examined the reports of the Federal Reserve Board and the FDIC to the Comptroller of the Currency in connection with the consolidation here involved.

A. Yes, I did.

Q. Do you agree or disagree with the conclusions contained in those reports?

A. I disagree with the conclusion arrived at by the Board of Governors, and I disagree with the conclusion of the FDIC.

Mr. WILLIAMS. Thank you. That is all I have.

Redirect examination by Mr. ODEAR:

Q. Just one thing, briefly, Mr. Jennings. Mr. Williams asked you if it was not true that, since the lending limit of the merged bank is $500,000, and that the lending limit of the old Security Trust Company was $440,000, that [839] there has been only a slight increase in the ability of the merged bank to make large loans.

Is the lending limit the only factor that enters into the ability of a bank to make a large loan?

A. No, of course not. In the instance of the Trust Company, it had a very moderate amount of deposits; and under the Kentucky law it did have a very large legal limit which, as was pointed out to me, was even larger than I remembered—$440,000.

It is wholly unlikely that a bank having $15 million of deposits would seriously consider making even one loan of $440,000. There might have been a loan occasionally under most unusual circumstances of that size, but the basket would have been filled up very quickly had a bank the size of the Trust Company embarked on a procedure or program of making very large loans.

It just wasn't in the picture, and another point has to be considered. The Trust Company had a very large volume of trust business, and they had to consider that capital in part as protection against anything that might arise in the trust area, apart from the commercial activities of the bank.

So when it is all analyzed, the $440,000 legal lending limit of the Trust Company in my judgment was far more theoretical than real.

[840] Q. Would you say that the actual ability of the merged bank to make loans in the larger category, up to $500,000, is substantially greater than that of either of the merged banks before the merger?

A. Oh, yes. The merged bank has far greater ability to make loans of that size.

Mr. ODEAR. That is all.

Mr. WILLIAMS. That is all, Mr. Jennings.

The COURT. Gentlemen, will you file that extract of the Committee Report about which Mr. Jennings commented. I have to go look them up and hunt them up somewhere, and I don't want the job.

Will you file them and identify them, Mr. Jennings?

Mr. ODEAR. Mr. Jennings, are you willing to file that report of the Senate Committee with reference to the Bank Merger Act of 1960?

The COURT. That is purely as an accommodation to me in studying the matter.

The WITNESS. Yes, sir.

The COURT. I don't want to go searching the Congressional Record for these reports. They have submitted them to you, and I have listened to your comments upon them. If you will file them as a part of the record, it will be an accommodation to me.

[841] The WITNESS. I would be very happy to, your Honor.

The COURT. If you don't want to file them, file them anyhow.

Mr. ODEAR. That doesn't give him too much choice, your Honor.

The CLERK. Exhibit No. 131 for the Government.

(The above-mentioned Senate Committee Report extract was filed with the Clerk and marked Plaintiff's Exhibit No. 131.)

(Witness was excused.)

Mr. ODEAR. Dr. John Masten.

Whereupon, Dr. JOHN MASTEN was called as a witness and, after having been first duly sworn, was examined and testified as follows:

The CLERK. The witness, your Honor, is Dr. John Masten.

Direct examination by Mr. ODEAR:

Q. Where do you live, Dr. Masten?

A. In Fayette County, the Greater Lexington area.

Q. What is your profession, sir?

A. I am Professor of Economics at the University of [842] Kentucky.

Q. Will you tell the Court what background, education, experience, and other quaifications you have had in the field of economics, and particularly with reference to banking.

A. I graduated from the University of Illinois in 1936. Until September of 1936 I worked for a metropolitan bank in St. Louis. In the fall I went back to the University of Illinois with a fellowship provided by the Illinois Bankers Association.

I wrote a master's thesis dealing with bond portfolio management. This thesis was published and distributed by the Illinois Bankers Association.

In the academic year 1937–38 I continued to do graduate work at the University of Illinois. I wrote a series of articles on bank investment policies that appeared in the Great Lakes Banker. I also worked with a team of graduate students under the direction of the late Professor Lee, studying banking facilities in the State of Illinois.

I taught as a visiting instructor for two years at Washington and Lee University, and the second year at Hendricks College in Arkansas. While in the State of Virginia I prepared several articles for the Virginia Bankers Association.

In Arkansas I wrote one article that appeared in their state banking magazine.

[843] I went back to school at the University of North Carolina and received a degree from North Carolina—Ph. D. degree—in 1942. My year at North Carolina was 1940–41. I had not quite finished my doctoral dissertation when I left the University of North Carolina. So in the year beginning September 1941 I started teaching at DePauw University in Greencastle, Indiana, where I taught courses in economics, economic systems, statistics, international trade and resources, and labor economics.

This period, incidentally, covers the war; and while at DePauw University I taught as a civilian instructor in the United

States Naval Flight Preparatory School that was on campus.

From November of 1944 until March of 1945 I was assistant professor of Finance at Ohio Wesleyan University, where I taught courses in economic principles, corporation finance, money and banking. From March 1945 until July of 1947 I was associated with the Bureau of Labor Statistics in their Chicago Regional Office.

I went into that office as assistant to the Regional Price Economist. When he left that position to go to a position in Washington with the Bureau of Labor Statistics, I took over in charge of the Price Division.

In the academic year from September of 1947 to June 1948 [844] I was chairman of the Department of Economics at Kalamazoo College in Kalamazoo, Michigan. Then in June of 1948 I came to the University of Kentucky.

Q. Since that time have you remained at the University of Kentucky?

A. Since 1948 I have been at the University of Kentucky; correct.

Q. In what field are your teaching activities at the University of Kentucky?

A. At the present time I am teaching an undergraduate course in money and banking, and an undergraduate course in comparative economic systems. I Also teach an advanced course in money and banking, which is open only to graduate students.

I am teaching those courses this semester. Last semester, in addition to the basic undergraduate courses in money and banking, I also taught a course in the history and theory of money, banking and prices.

Q. What have you done, if anything, in continuing your research in the fields of economics and money and banking?

A. Well, I have written a number of articles; and I have been associated with the Kentucky School of Banking during most of the years that I have been at the University of Kentucky, and that has required considerable research. I have prepared cases that have been used for group discussion in [845] the Kentucky School of Banking.

I could be more specific about those.

Q. I believe that is adequate, Doctor. In brief, you have continued research in that field while a member of the faculty of the University of Kentucky?

A. Yes, that is right.

Q. I believe Rutgers University has a School of Banking there which bankers from all over the United States attend, does it not?

A. Yes.

Q. Have you ever had anything to do with the teaching of those courses at Rutgers?

A. Yes. I was a member of the faculty last summer and I have been invited to participate again next summer.

Q. Are you a member of any societies or organizations in the field of finance and banking, the membership of which contributes to your education in that field?

A. I am a member of the American Finance Association; American Economic Association; and the Southern Economic Association.

Q. You have meetings of those associations where problems in those fields are discussed?

A. Yes; and there are professional journals available.

Q. The University of Kentucky, of course, is at Lexington; [846] and you have lived in Lexington for how long now?

A. It will be fourteen years next June.

Q. By reason of the fact that you are interested in the field of banking and finance and living in Lexington, have you become familiar with the banking situation in Lexington?

A. Yes, I have.

Q. Dr. Masten, at our request have you made any study of the exhibits filed by the Government in this case and the exhibits filed by the Defendant in this case?

A. I believe that I have seen most if not all of the exhibits filed by the Government and by the Defendant.

Q. Give the Court some idea of the time you have spent in the examination of these documents.

A. The total time—it would be difficult to break out the amount of time that was specifically related to documents; but I suppose I spent about 100 hours in total.

Q. In the study of this case in general?

A. In general, yes—about 100 hours.

Q. Dr. Masten, who is responsible for the supervision of national banks?

A. Basically, under the National Banking Act of 1863, the Comptroller of the Currency is responsible.

Q. Following that down historically to the present time, who is responsible for the operation of the national banks [847] at the present time?

A. The Comptroller of the Currency.

Q. What is the situation with reference to the responsibility for supervision of state banks which are members of the Federal Reserve System?

A. The Federal Reserve primarily.

Q. What about non-member state banks which are insured in the FDIC?

A. They would be subject to supervision by the Federal Deposit Insurance Corporation and by the state banking agency that is responsible.

Q. Dr. Masten, I believe that charts which have been filed as exhibits in this action show that the merged bank will have approximately 88 percent of the FHA Title I loans of all such loans held by commercial banks in the City of Lexington.

Based on your experience and your knowledge of the facts involved in this case, state to the Court whether or not this indicates any monopoly in the field of FHA Title I loans in the hands of the First Security National Bank.

A. In my opinion it does not. Each bank has its own managerial staff, directors, and executive officers. Banks formulate policies in regard to the areas of commercial banking that they are particularly interested in [848] acquiring. Some banks may not even choose to do this kind of lending at all.

Q. In other words, is it true that the various fields of lending which are available to commercial banks, the participation of any one single bank in those particular fields is more or less a matter of management choice?

A. Yes, in my opinion it is.

Q. I will ask you now to refer to Government Exhibit No. 82, which I believe deals with loans made for the purpose of the

purchase and carrying of securities. Do you have that before you, and are you familiar with that exhibit?

A. Yes.

Q. Would you give to the Court the benefit of what that exhibit shows with reference to the situation we are talking about?

A. This exhibit shows the total loans for purchasing or carrying securities of all commercial banks in Fayette County, Kentucky, as of December 31, 1960.

Q. Do the facts and figures on that chart indicate the existence of any monopoly in favor of the First Security National Bank in Lexington or of either of its predecessors prior to the merger?

A. No, it does not. It indicates to me a matter of managerial choice. For example, the second largest bank in [849] Lexington shows no loans of this type at all. I am certain that they could, if as a matter of policy they wanted to seek this kind of business, obtain it.

On the other hand, the Central Bank, which is next to the smallest bank, shows 53.09 percent of such loans. Apparently the Central Bank solicits this type of business; and from the evidence here they have been very successful.

Q. That is what I was going to ask you: What does that indicate to you as to the ability of the Central Bank—one of the smaller banks in Lexington—to compete with the larger banks in that field in which its management has chosen to go into rather heavily?

A. They have competed here, and obviously they have competed very successfully.

Q. Let me now call your attention to Government Exhibit No. 54, which deals with the loans of commercial banks in Lexington which are classified as commercial and industrial loans—Government Exhibit 54. What if anything does that indicate as to the competitive ability of banks in Lexington as against each other in that particular field?

A. This table shows the total of commercial and industrial loans of all commercial banks in Fayette County as of December 31, 1960. It shows that the combined banks had 45.61 percent. The Citizens Union, 25.85. The Bank of [850] Com-

merce, 26.08. The Central Bank, zero. The Second National Bank and Trust Company, 2.46.

Q. What does that indicate to you with reference to the ability of the banks in Lexington to compete with each other?

A. It indicates to me that any bank, if it desires, can obtain a part of the commercial lending business of Lexington.

Q. Again, do you feel that that particular facet of lending by commercial banks is a matter of managerial choice?

A. It is a matter of managerial decision.

Q. Let me now call your attention to Government Exhibit 56, which I believe deals with single-payment loans to individuals for household, family, and similar expenditures. Do you have that before you?

A. I have that.

Q. Are you familiar with that exhibit?

A. I have seen this exhibit.

Q. What does that exhibit indicate to you with reference to the ability of Lexington banks to compete against each other?

A. This table shows the total single-payment loans to individuals for household, family, and other personal expenditures of all commercial banks in Fayette County as of December 31, 1960.

[851] The combined First National Bank and Security Trust had 71.22. The Citizens Union Bank shows no loans of this type. The Bank of Commerce, 1.64. The Central, 13.97. The Second National, 13.17.

Q. What does that indicate to you with reference to competition?

A. It indicates again that the smaller banks, if they seek this business, can obtain it. After all, the Citizens Union is the second largest bank in Lexington, but apparently it does not solicit this kind of business. Therefore it shows no loans of this classification.

Q. I will ask you now to look at Government Exhibit No. 57 which deals with a somewhat similar type loan, being a loan to individuals on an installment basis for household, family, and other personal purposes. Do you have that before you?

A. I have No. 57 before me, yes.

Q. Are you familiar with that chart?

A. Yes, I have seen this chart.

Q. What does that indicate to you with reference to the ability of the banks in Lexington to compete against each other in that particular field of lending?

A. This chart shows the total loans to individuals on an installment basis for household, family, and other personal [852] expenditures, December 31, 1960. The First National Bank and the Security Trust Company combined, 64.04. Citizens Union, 17.76. Bank of Commerce, 3.23. Central Bank, 13.03. The Second National, 1.94. All banks have loans of this type.

Q. What does that indicate to you, if anything, with reference to the ability of Lexington banks to compete against each other in that particular field?

A. I would first of all indicate that the Central Bank and the Second National Bank, which are very similar in size, show a considerable difference in the amount of loans of this type that they make.

I again would say that this is a matter of management decision. Apparently the managers of the Central Bank actively and aggressively seek this kind of loan; whereas the managers of the Second National Bank are not as aggressive in seeking this type of loan.

Q. As a contrast to that, let me call your attention to Government Exhibit No. 12, which deals with real estate loans in Fayette County secured by farm land. Would you turn to that exhibit, please.

A. Exhibit No. 12 shows the total real estate loans secured by farm land of all commercial banks in Fayette County, December 31, 1960.

Q. Are you familiar with that exhibit?

[853] A. I have seen this exhibit, yes.

Q. As contrasted to the last exhibit which I showed you, what does this show as to the ability of competing banks in Lexington and as to the extent each has gone into this particular field?

A. It shows that the combined banks had 40.97 percent of the real estate loans secured by farm land. The Citizens Union National Bank and Trust Company, 13.30. The Bank of Com-

merce, 16.76. The Central Bank, 2.58. The Second National Bank, 26.40.

As contrasted with the last table, it is obvious that the Second National Bank aggressively seeks this kind of a loan, whereas the Central Bank—again in contrast—does not. But all banks show this kind of lending. Again it is a matter of individual management preference.

Q. I will ask you to look on that exhibit and tell us as of December 31, 1960, what the First National Bank and Trust Company—which was at that time the largest bank in Lexington—had dollar-wise in loans secured by farm land.

A. $369,000.

Q. One of the two smallest banks in Lexington, the Second National Bank: What did it have in dollar volume?

A. $389,000.

Q. So that the Second National Bank had more than the [854] largest bank in Lexington?

A. That is right.

Q. What does that indicate to you as to its ability to compete with the largest bank in Lexington?

A. It obviously has competed very successfully.

Q. Let me refer you to Defendant's Exhibit No. 39, which deals with deposits of state and political subdivisions as compared to total deposits for all banks in the Lexington area.

A. Do I have that?

[855] (The document was shown to the witness.)

Mr. MITCHELL. What number is that?

Mr. ODEAR. Defendant's Exhibit Number 39.

By Mr. ODEAR:

Q. Does that show, Doctor Masten, the deposits by political subdivisions in local banks?

A. Yes, it does. This is a balance sheet showing the employment of resources and liabilities of all Lexington banks as of the year-end call report 1960. Under the liabilities, we have the various categories of deposits, including a category showing deposits of state and political subdivisions.

This percentage would be relative apparently to total assets.

Q. Yes.

A. It shows that the First National had 6.18 percent. Security Trust had 1.67 percent. Citizens Union had 1.43 percent. The Bank of Commerce had 6.93. The Second National had 1.05 percent. Central Bank had 19.05 percent.

Q. What is the comparison between the First National Bank, which is the largest bank, and the Central, which was then the smallest bank in this particular field?

A. In terms of dollars or percentage?

[856] Q. Both.

A. In terms of dollars, the First National Bank had $4,023,306, or equal to 6.18 percent of total assets.

The Central Bank had $2,844,824, or equal to 19.05 percent.

Q. Percentagewise it was far ahead of the largest bank in this field, was it not?

A. That is right.

Q. Now, percentagewise what was the second most successful bank in competing in this field?

A. The Bank of Commerce, with 6.93 percent.

Q. Based on your experience, Doctor, would you say that in the field of obtaining deposits from political subdivisions and from the State indicates anything as to the bank's influence in gaining deposits?

A. Well, they have been very successful. I am referring to the Central Bank particularly.

Q. Yes.

Doctor Masten, based on your education and training and experience that you have described to the Court already in your testimony, and on your study of the facts and figures involved in this particular lawsuit with reference to the merger of these two banks, would you give the Court your opinion, if you have one, as to whether or not the merger of the First National Bank and the Security Trust Company in Lexington has created any monopoly in [857] commercial banking?

A. No, I do not think that it has.

Q. From your study which you have described, do you see any indication of any attempt on the part of these two banks to create a monopoly in commercial banking?

A. No, I do not.

Q. Based on your experience, training and education, and based on your knowledge of the facts of this particular case, state whether or not in your opinion the merger of these two banks has resulted in a restraint of trade and commerce in the United States in commercial banking.

Mr. WILLIAMS. Your Honor, I would like to object to this line of questioning since it calls for a legal conclusion.

The COURT. Yes. I understand that. He can give it if he wants to.

By Mr. ODEAR:

Q. Would you express your opinion?

A. In my opinion it does not.

Mr. ODEAR. You may cross-examine.

Cross-examination by Mr. MITCHELL:

Q. Doctor Masten, you examined several charts concerning individual types of loans made by the various banks.

[858] I wonder if you would now take a look at Government's Exhibit Number 7.

A. This is a letter?

Q. No. Government's Exhibit Number 7 is entitled "Total Net Loans and Discounts of all Commercial Banks in Fayette County, Kentucky."

In your opinion, would this chart give a more valid basis for determining the extent of lending activities in their entirety by the commercial banks in Fayette County than any of the individual charts which you previously examined?

A. The previous charts indicated particular types of loans. This is the figure for total loans, yes.

Q. I wonder if you would tell us, then, what the percent of the total held by First Security is as a result of this merger?

A. 54.20 percent.

Q. What is the percentage of the next largest bank?

A. The next largest is the Citizens Union National, 16.41.

Q. In the total field of lending First Security has approximately three and a half times more than the next largest bank; is that correct?

A. It is, yes.

[859] Q. I wonder if you would look again at Chart Number 12 which you commented on previously.

A. Real Estate Loans?

Q. Yes.

I believe you said that this indicated that Second National specialized in this area, and prior to the merger they had a larger volume than did First National?

A. In terms of dollar amount, yes. That is the First National singly, as a single bank.

Q. I wonder if you would tell us what happened as a result of the merger.

A. As the result of the merger, the First National and Security Trust combined have six hundred four, or 40.97 percent.

Q. And, so, now Second National is the second largest?

A. It is the second largest, yes.

Q. I believe you stated that these indicate managerial choice as to what types of loans they will pursue or actively seek?

A. Yes.

Q. Are your conclusions based entirely on statistics in these charts or have you discussed this with the management of the other banks?

[860] A. I haven't discussed it with the management of all of the other banks. But I know most of the people in banking. And, in fact, I bank in two of these banks, excluding the merged bank. I do not bank at the combined bank. And from my experience working with bank data, I have, for example, a study—I think it was as of the end of 1957—of over a hundred banks in Kentucky. We have used this study in the Kentucky School of Banking. And I have sat in with bank people.

I know that the executive officers of banks establish policies that are applicable to their particular bank. Some banks will follow one policy, and another bank won't have anything at all to do with that policy.

Q. But with respect to this merger and your testimony here, you have not discussed with the management of any of the other banks in town what particular areas they decide to pursue, and your statement is based upon the statistics and the charts here?

A. I have not since this merger has been involved discussed this with the other bankers, that is true.

Q. Doctor Masten, have you ever actually been engaged in banking?

A. I worked in a bank in the summer of 1936.

Q. For how long?

[861] A. During the summer.

Q. That is the entire extent of your actual banking experience?

A. In a bank, yes.

Q. Doctor Masten, I believe you indicated that you have written several articles?

A. That is right.

Q. For various magazines and for publications. I wonder if you recall an article which you wrote which appeared in the April 14, 1960 edition of the Commercial and Financial Chronicle?

A. I have written several articles that have appeared in the Commercial and Financial Chronicle. In fact, I have just submitted one very recently.

Q. The title of this article is "The Management of Bank Funds."

I would like to read you just a few sections of it and ask you whether or not you recall making these statements in the course of your article and whether or not you agree with it.

A. All right.

Q. "The most important obligation of the commercial banker is to pay his depositors on demand. In fact, commercial banks are the only private institutions serving the general public that have an obligation to pay on [862] demand."

Now, this statement appears in your article. I assume you believe it to be true?

A. Yes, I believe that.

Q. Now, in the same article at a later point in which you are discussing the investment portfolio of banks with respect to the various terms of their investments, you made the following statements: "Insurance companies, trust funds, pension funds, savings banks, and other financial institutions are better adapted by the nature of their operations to the holding of long-term issues. Long-term investments have a residual claim to bank funds. Primary and secondary reserves adequate to provide sufficient liquidity have the first claim. Short-term loans have the second priority, while long-term loans and investments have only a residual claim."

A. Yes.

Q. You believe that to be a correct statement?

A. Yes.

Q. I now have an article which appeared in the July 21, 1960 edition of the Commercial and Financial Chronicle. And I would like to read you just a brief statement from it.

A. All right.

[863] Q. "Banks prefer to lend rather than to invest. Lending is usually more profitable since loan rates tend to be higher than other open market. Furthermore, banks as financial institutions exist primarily to facilitate the flow of short-term funds into the hands of local borrowers. This is one of the reasons why we call them commercial banks."

A. That is right.

Q. You believe that to be a correct statement?

A. Yes.

Q. Now, I believe in the volume 27 of the Southern Economic Journal you wrote a book review of a book entitled "Merger Movements in American Industry, 1895 to 1956" by Ralph L. Nelson.

Do you recall that?

A. Yes.

Q. In the course of that book review, you made the following statement:

> Unfortunately it is impossible to determine and list the motives that promoters of mergers may have had in mind. However, the author feels that it is safe to infer that the desire to avoid vigorous competition and the promise of monopoly profits may have been important.

Do you recall that statment in the course of your [864] book review?

A. In that statement where it says "author", that refers to the author of the book.

Q. Yes.

A. Yes.

Q. Do you agree with his conclusion that it is safe to infer that? Or do you disagree?

A. I believe that I had some disagreement with the author of that book. In fact, it must have been about two years ago

that I read that book and prepared this review. But I felt that he had ignored what might have been the most important reason accounting for the merger movement in the United States, yes.

Q. I am just asking you: you don't agree that it is safe to infer that these two possibilities, the avoidance of vigorous competition and the promise of monopoly profits, may have been important?

A. They may have been a factor, yes.

Q. Now, I have here an article of yours which appeared in the July 27, 1961 edition of the Commercial and Financial Chronicle in which appears the following statement:

> There seems to be a tendency in American commercial banking for large banks to grow more rapidly than [865] smaller institutions.

Did you make that statement?

A. For the system as a whole, yes. The small banks are moving up into the larger bank category.

Q. You believe this to be a true statement?

A. Numerically, yes.

Q. I want to get back briefly to this article which appeared in the April 14, 1960 edition of the Commercial and Financial Chronicle which I previously asked you about, in which you made the following statement:

> At the end of 1959, American commercial banks had capital accounts equal to 7.8 percent of total assets.

A. Yes.

Q. Do you recall that statement?

A. Yes.

Q. Now, recognizing that it is difficult to apply general rules to individual situations, would you say that that on the average would be an adequate amount of capital, approximately 7.8 percent of total assets, since that is the average of American commercial banks over the entire country?

A. I think it would be very difficult to know what is an adequate amount. Earlier in the 1940's, the F.D.I.C. [866] in their annual reports was talking about the need for a 10 to 1 ratio, which would be 10 percent.

Now, as a matter of principle—and I think actually you would have to look at individual banks as such—but, as a matter of principle, if a bank were in every way average, that would be enough, yes.

Q. I see.

I would like to now show you two documents. One is entitled "Member Bank Operating Ratios, Fourth Federal Reserve District, 1960", which gives various ratios.

The other gives comparable information for First National Bank as of 1960. We only have one copy. And I believe we got this one from the Defendant banks.

(The documents were handed to counsel for the Defendant, and then to the witness.)

By Mr. MITCHELL:

Q. Would you turn to the page of that Federal Reserve Report that the First National is in. Down at the bottom there I think you will see Item Number 33, which gives the ratio of capital accounts to total assets of all member banks in the Fourth Federal Reserve District for 1959 and 1960.

A. All right. Capital accounts to total assets, yes.

[867] Q. Now, would you read the ratio of all member banks, the average ratio for 1959. Excuse me. In the category of banks with deposits of $50 million to $100 million?

A. For 1959, 7.7 percent.

Q. What is the figure for 1960?

A. It is somewhat blurred here. But I believe it is 8.0 percent.

Q. And on the sheet of paper listing the same figures for First National, would you give First National's capital ratio?

A. I assume this is 7.8.

Q. Yes, that is correct.

Now, would you move down to Item Number 35, which gives the ratio of capital accounts to total deposits. And would you read the figure for the average of the banks in the Fourth District for 1959?

A. For Item Number 35?

Q. Yes, sir. That is the banks of $50 million to $100 million.

A. Oh, $50 million to $100 million?

Q. Yes.

A. 8.5.

Q. And what is the figure for 1960?

A. 8.9.

[868] Q. Now, would you read the comparable figure for First National as of that date?

A. 8.6.

Q. Thank you.

Now, I believe, Doctor, you made several statements with respect to the fact that certain percentages read to you by Mr. Odear did not indicate any monopoly of various banking categories here in Fayette County. Is that correct?

A. That is right.

Q. And your answer was based upon the fact that there are other banks who do not choose to engage in this type of activity, and, therefore, should they desire to do so, they could come in and obtain some of that business. Is that correct?

A. Yes.

Q. So that even if one bank had a hundred percent of a particular type of business, your answer would be the same that it does not have a monopoly because the other banks could come in and get that type of business if they want to?

A. I think it would be very unusual for a bank to engage in a particular area of lending where no other bank was also engaged in that lending. But if it is a normal [869] banking activity, I would answer your question yes.

Q. Now, in connection with this, you answered several questions with respect to whether or not they do have a monopoly. I ask you whether or not that answer is based entirely upon the statistics which you have read in the charts here?

A. I am not sure that I entirely understand your question.

Q. Is the basis for your statement that First Security does not have a monopoly in any of these various banking functions which you were asked about based entirely upon the statistics contained in the charts which you have examined?

A. It is based primarily on the statistics in the chart, plus such knowledge as I have of banking in Lexington.

Q. I see.

Have you ever made any specific study of the law of monopoly?

A. No.

Q. You have not?

A. No.

Q. Now, you also answered questions with respect to attempt to monopolize and restraint of trade. Again are your answers to those questions based almost entirely upon [870] the statistics contained in the exhibits in this case?

A. They are based on my knowledge of banking.

Q. Have you ever made any specific study of what constitutes an attempt to monopolize under the law?

A. I do not recall ever having seen a study as to what constitutes an attempt to monopolize in the area of banking.

Q. You have not?

A. No.

Q. Have you ever studied or made any specific study with respect to what constitutes restraint of trade in banking or in any other industry?

A. I am unaware of any studies that have been made to indicate restraint of trade in banking.

Q. What about restraint of trade in other industries?

A. I am aware of restraint of trade in other industries, yes, competitive industries.

Q. Yes.

You have made a specific study along those lines of what constitutes a restraint of trade for the purposes of this case?

A. Not for the purposes of this case, no.

Q. I see. Now, since your opinions are based primarily upon the statistics contained in those exhibits, I [871] wonder if you would tell the Court what percentage of a certain type of business a bank would have to obtain before there were a restraint of trade?

A. I have no idea what percentage it would be. I take a little different view of banking. First of all, I regard banking as being a regulated industry.

I don't regard it as a competitive industry in the sense that merchandising or manufacturing is competitive. There are over seven thousand communities in the United States that have currently only one bank.

Q. Where did you get that information from, Doctor?

A. From the FDIC 1960 Annual Report. I have written an article, this one that I have mentioned, which incorporates this. The title of it is "Banking as a Regulated Competitive Industry."

Q. Do you know what the average size of those communities are?

A. I understand it is quite small in most cases.

Q. Now, do you regard the reduction in number of banks in Lexington from six to five as adverse to the community?

A. No, I do not.

Q. As a matter of fact, you wouldn't regard the reduction of the number of banks from six to one as adverse to [872] the community, would you?

A. I would in this sense, sir: if you could remove the human element from banking, I think one bank could do the job. Now, we may at some time progress to the point where automation will make it possible to remove the human element. But as long as the human element is present, I think it is advantageous for a customer, either as a borrower or as a depositor, to have a choice.

Q. Are you in favor of statewide or Federal Reserve District-wide branch banking?

A. Yes.

Q. Even if this resulted in the extension of the large city banks into smaller areas and the elimination of a large number of unit banks now, let us say, in Kentucky?

A. The United States and India are the only countries that have the kind of a banking system that we have. Historically the record of American banking has been very poor. Beginning with the National Banking Act in 1953, we have attempted to establish a system where the primary emphasis would be upon safe and sound banking. I believe that the large regulated banks are more likely to give us stability than a very large number—let's go back to the 1930's when we had 31,000 banks in the United States and [873] half of them failed—that a large branch banking system will give us a safer and sounder system than a large number of small banks.

Q. You are more concerned with the stability of the banks than you are in favor, as a matter of fact, of very much in-

creased concentration in banking which would inevitably result from district-wide branch banking?

A. I am not opposed to increased concentration. I think two large units can compete and maybe more vigorously than five or six small units.

The public might get better service if two or three large banks competed with one another than to have a large number of small banks.

Mr. MITCHELL. No further questions, your Honor.

Redirect examination by Mr. ODEAR:

Q. Doctor Masten, you were asked about a book review of a book by Doctor Ralph L. Nelson. The first sentence of your review of that book states as follows: "Doctor Nelson's principal objective in this empirical study is to provide more complete data on merger activity in manufacturing and mining for the period.

A. Yes. It did not apply to banking. That is true.

Q. That book did not deal with mergers of banks at [874] all, did it?

A. No, it did not.

Mr. ODEAR. That is all. Thank you very much.

No further questions.

The COURT. You are excused, Doctor.

(Witness excused.)

Mr. ODEAR. I would like to call Mr. Kennedy Sinclaire.

Whereupon J. KENNEDY SINCLAIRE was called as a witness, and being first duly affirmed, was examined, and testified as follows:

Direct examination by Mr. ODEAR:

Q. Mr. Sinclaire, where do you live, sir?

A. I live in Rutherford, New Jersey.

Q. What business are you in?

A. My business is to develop trust business for banks and trust companies all over the United States.

Q. Are you employed by any institution that is engaged in that field of activity?

A. Yes, I am.

Q. What is the name of the institution for which you work?

[875] A. Kennedy Sinclaire, Incorporated.

Q. What is your position with Kennedy Sinclaire, Incorporated?

A. I am the Chairman of the Board.

Q. Tell the Court generally what you and your employer do exactly.

A. Well, we attempt to encourage banks to develop new trust business. We further work out the plans and programs that would help them do that.

Q. For example, do you go to a commercial bank in a given community and attempt to sell them a service by which you can help them to increase their trust business? Is that what you do?

A. That is correct.

Q. Over what area does your company render that type of service?

A. Throughout the United States, including Hawaii and Alaska.

Q. How long have you been engaged in that field of enterprise?

A. Thirty-one years.

Q. Before going to a bank in a given community, do you make any type of study or survey as to the trust situation in such a community?

[876] A. Yes, we do.

Q. In connection with that, have you made any such studies in Fayette County?

A. Yes, we have.

Q. Fayette County, Kentucky?

A. Yes, we have.

Q. When did you make such study?

A. One was made in 1939 and 1942 and one in 1951.

Q. Do you have copies of those studies? Do you have copies of the results of those studies before you?

A. Yes, sir, I do.

Q. Do you have at hand a document headed "Lexington, Fayette County, Kentucky, 1939–1942, Estates over $5,000, Summary"?

A. That is right.

Q. Where was that information obtained?

A. That was obtained from the Court records, from the Fayette County Probate Court.

Q. The public records of the County Court Clerk in Fayette County?

A. That is correct.

Q. What do you attempt to show on that summary?

A. Well, we attempt to show first the market available under wills that are here for the banks to secure if [877] possible, who gets the business as far as corporate executors are concerned and individual executors, how many intestacies there were—in other words, persons dying without wills—and also the estimated fees that were available if the banks had been able to secure the business.

Q. What did that study show you as to the total dollar volume available in the trust field in probate trusts for the period 1939 to 1942?

A. There were 175 estates over $5,000. And the total dollar volume was $6,484,653.

Q. And what did that study show you as to who was obtaining the trust business in the handling of those trust estates?

A. Corporate fiduciaries received twenty-five accounts, or 16.1 percent, a dollar volume of $1,415,051, or 21.8 percent. The average size of the estate was $56,000.

Q. What does it show you as to individuals performing those services?

A. The individuals received appointments under 75 wills, 42.8 percent; in dollar volume, $3,101,759, or 47.8 percent.

Q. And that is where there were wills?

A. That is correct.

[878] Q. What figures did it show you with reference to estates where the owner died intestate?

A. There were 72 such wills. Dollar volume was $1,832,598. Total percentage of dollar volume was 28.3 percent.

Q. On the basis of that, where would you say that the main competition with commercial banks in Lexington came from in the matter of trusts subject to probate records?

A. It came from individual appointments.

Q. Will you now turn to the next page which shows the analysis of the handling of those trusts by corporate executorships.

What does that show with reference to what banks in Lexington were getting that business as between the banks in the period 1939 to 1942?

A. The Security Trust Company received appointments in 17 cases, 17 wills. Total dollar volume, $1,130,478.

The Union Bank and Trust, four appointments, $201,521.

The First National Bank, four appointments, $82,952.

Then there were some co-executorship appointments. First National had one. Citizens Bank had one. The Bank [879] of Commerce had one.

Q. Now, did you make a study in 1951?

A. We made a study primarily of the accounts, where the accounts were.

Q. And that study, was it based on the individual accounts?

A. That is the accounts of the individual estates, that is correct.

Q. Did you as a result of those studies set out the names of the deceased persons whose estates were being handled at that time and who handled them and the size of the estates?

A. Yes, sir.

Q. Will you file those studies as a part of your testimony in this case?

A. Yes, sir.

The Clerk. Exhibit Number 97 for the Defendant.

(The document above mentioned was filed with the Clerk and marked Defendant's Exhibit Number 97.)

By Mr. Odear:

Q. Mr. Sinclaire, I want to be sure that I understood you, that your study both in 1939, 1942 and 1951 came from the public records of the County Court Clerk's office in Fayette County? Is that true?

[880] A. That is correct.

Q. Have you made similar studies in various localities all over the United States?

A. We have.

Q. Approximately how many such studies have you made over the past years in that field?

A. About seven hundred.

Q. Have you been successful in obtaining the employment of you and your company by banks in the United States in helping them to increase their trust business?

A. We have been passably successful, yes, sir.

Q. About how many such accounts have you been able to obtain?

A. We have 476 bank customers.

Q. Now, by reason of your participation in that competitive field with these banks who have become your customers, have you obtained a rather wide knowledge of whether or not a small bank can compete against a large bank for obtaining trust business?

A. We think so.

Q. Tell the Court what as a result of your experience, actual experience in that field, is the ability of a smaller bank to compete against a larger bank for trust business?

[881] A. I think it is a mattur of effort and energy. I think a small bank has an equally good possibility of securing the business as the large bank if it earnestly pursues it. And we have found in many areas where small banks properly setting up a plan and carrying it through have been able to greatly increase their take of the trust market and set up a very profitable trust operation.

Q. Have you had the opportunity to examine such of the exhibits which have been filed in this case by both parties as deal with the situation in the trust field in Lexington?

A. Yes, I have.

Q. I believe it is indicated that the merged bank in Lexington would at the time of the merger have approximately 94 percent of the trust assets handled by commercial banks in Lexington and approximately 79 percent numerically of such accounts handled by commercial banks.

State to the Court whether or not in your opinion that fact would preclude the smaller banks in Lexington from successfully competing for trust business in Lexington?

A. No, I don't think so. I think the trust business is a peculiar business unto itself in the sense that it is a very personal business. And, as a consequence, the small bank sometimes has a great advantage over the [882] large bank.

Q. Is there any advantage in largeness of size in obtaining trust business?

A. Not personal trust business particularly.

Q. Is there sometimes an advantage in smallness in size in obtaining personal trust business?

A. Yes, we find that to be so.

Q. Would you indicate to the Court what that advantage may be?

A. Well, a man owning an estate is very anxious to have his wife and children taken care of by usually the head of a department. And he recognizes pretty quickly that in a large institution she isn't going to get the attention of the head of the department, whereas in the small institution, she is. And that is a very great advantage to a small bank and a small institution. They have a personal sale to make.

Q. Is that one of the things which you use in promoting small banks in obtaining trust business?

A. We do.

Q. In your business?

A. We do.

Q. Now, out of your wide range of experience all over the United States, can you give to the Court any [883] illustrations of where smaller banks have been highly sucessful in competing against larger banks for personal trust estates?

A. Yes, sir, numerous instances.

In Albany, New York, I just made a ten-year study of banks' profits and trust departments of customer banks.

Mr. WILLIAMS. Excuse me, sir.

Your Honor, I object to this line of questioning as to what may happen in Albany or has happened in Albany, New York. I don't think it is relevant to the situation in Lexington.

The COURT. Well, if it isn't, of course we have no concern or interest in it. And before you introduce it, you should make some showing that it has some relevancy to the problem that we are dealing with here.

Mr. ODEAR. All right.

By Mr. ODEAR:

Q. Do you have any experience in situations of smaller banks

competing against larger banks where the situation which existed is similar to that which exists in Lexington, Kentucky?

A. Yes, sir.

Q. Do you think that where similar situations exist that the experience that other banks have had would indicate [884] anything as to the ability of Lexington banks to compete against the larger bank in obtaining the trust business?

A. I think so. I think the condition exists in any city.

Q. In other words, do the same factors which influence prospective customers entering the trust field of a bank exist in Lexington as well as in other cities of the United States?

A. Yes, we find that to be true.

Q. On that basis could you give us any illustrations of cities in which there are smaller banks where the situation is comparable to that in Lexington where the smaller banks have successfully competed for the trust business?

Mr. WILLIAMS. I object unless he explains in exact detail his knowledge of the situation in Lexington. The situation in Lexington covers a wide field.

The COURT. He has been testifying all afternoon about his knowledge of the situation here in Lexington. I think it is sufficient to give his judgment as between the two cities. I will overrule the objection.

By Mr. ODEAR:

Q. Give us some situations that you think would be applicable to the situation.

[885] A. In Albany, New York, the Farmers and Mechanics Bank of Albany has 2 percent of the total deposit business in Albany. In the years from 1940 to 1947, from a probate record study, it secured appointments in 22 cases totaling $3,402,000. After promoting its trust department in the years of 1948 to 1955, which is another seven-year period, it raised its number from 22 to 50 appointments totaling almost $7 million.

Now, the largest bank in the community, which is twenty times the size of this bank, had 64 appointments in 1940 to 1947 totaling $8,800,000. In 1948 to 1955, it had fifty appointments totaling $8,000,000.

Q. Without burdening the record with other individual specific examples, Mr. Sinclaire, let me ask you if in your opinion

the fact that immediately following the merger the merged bank in Lexington had 94 percent of the trust assets handled by commercial banks and 79 percent by numerically on such counts, what effect if any do you think that would have upon the ability of the other banks in Lexington to compete for trust business; that is, in the future?

A. I think the trust business is a parade of people. It is constantly moving. And as a consequence, nothing sits in one place very long. So that means that all the banks have an opportunity to secure this business because [886] the people keep moving through.

More people and more wealth come in. They can sell those people the wealth. The bank that goes after it will get it.

Q. Is the competition in trust business for new trust business rather than for trust business which has already been established?

A. That is correct.

Q. Have you made any study as to the increase in the size and volume of estates and trust business in Lexington, Kentucky over the past few years?

A. Well, I have seen a study that has been made of it.

Q. What study was that, now?

A. That was the study that has been made of the years from 1940, I think, to 1961.

Q. One of the exhibits which is in evidence in this case?

A. That is correct.

Q. Would you tell the Court what is the significance of that study to you?

A. Well, it does exactly what I would like to find out about a market. It shows the total market. It shows where it is going, what banks secured it, and also it [887] shows how much business the individuals secured.

Q. And what is the situation with reference to competition as between banks and individuals in that field?

A. Well, the individuals have secured a large proportion of the business. And, as a matter of fact, the interesting thing to me is that the market has grown so rapidly, which is again indicative of the parade of people——

Q. What has it shown as to the rapid growth of the market in Lexington and Fayette County?

A. Well, from 1940 to 1945, the average in round numbers per year was $2,500,000 in the market. From 1956 to 1961, through 1961, it was $8,900,000 a year, which is, well, almost three times—the growth has been three times the original market.

Q. Relating that to the fact that the competition for trust business is for new trust business, what would it indicate to you as to the ability of the smaller banks in Lexington to compete for trust business in the future?

A. I think the opportunity is greater. I think with the larger number of people available they should be able to compete very readily with them if they go after it.

[888] Mr. ODEAR. I believe that is all. You may ask him.

Cross-examination by Mr. WILLIAMS:

Q. Mr. Sinclaire, what is the population of the City of Albany?

A. It is about 120,000, I believe.

Q. What is the relative position of the banks in that city?

A. As I said, this Farmers Mechanics has two percent of the total deposits. There are three very large banks which have, as you see, 98 percent of the total deposit business. Of the other three—there is one extremely large bank—the National Commerce Bank.

Q. Troy is not far from Albany, is it?

A. That is correct.

Q. It is very close by?

A. That is correct.

Q. It is in the same competitive area, would you say?

A. No, it is in a different county. It is across the river, and the river divides the town. So people don't move across the river usually.

Q. How far away is it in miles?

A. Oh, it is about not more than twenty miles.

[889] Q. So that the geographic situation and competitive situation in Albany wouldn't necessarily be the same as in Lexington, would it?

A. I would say there wouldn't be much difference, not from my experience.

Q. Mr. Sinclaire, when you made the study mentioned earlier in 1939 and 1942, that only related to a very small part of the trust business of a commercial bank, did it not?

A. It is supposed to be a complete study. I didn't make it personally. One of our salesmen did.

Q. What items of trust business were covered by the study?

A. Just estates.

Q. What I am trying to get at, Mr. Sinclaire: The trust department of a commercial bank transacts a lot of different types of trust business in addition to estates. Is that correct?

A. That's correct.

Q. This study only related to estates that were qualified by court qualification?

A. That is correct. In other words, a person died and the will was filled and an accounting was made. That is the accounting.

Q. So that that is a very limited portion of the [890] total trust business conducted by commercial banks?

A. It is the most profitable.

Q. Do you have that exhibit before you, sir?

A. No, sir, I am sorry, I don't.

Mr. ODEAR. Which one do you want, Mr. Williams?

Mr. WILLIAMS. 97.

The WITNESS. Now I have it.

By Mr. WILLIAMS:

Q. If you will turn to page 3 of that exhibit, Mr. Sinclaire, over in the right-hand corner it says, "Bank Connection." How did you find out that information?

A. Accountings usually show where the individual who has died has his account in banks, and also the stock ownerships. In other words, it show property broken down. That is to go through probate.

Q. That is reflected in the records?

A. Yes, sir, that is correct.

Q. The two studies you referred to—one was made in 1939 to 1942, and the other one in 1951—do you recall just when the one in 1951 was made?

A. I am afraid I don't, no sir.

Q. You haven't made one since that time?

A. No, sir, we have not.

Q. Mr. Sinclaire, would you name some of the different [891] types of trust business handled by a commercial bank in addition to the one to which your earlier studies related?

A. They act as trustee under living trusts; they act as trustee under testamentary trusts; they act as agent; they act as investment adviser under investment advisory service; they act as escrow agent; they act as custodian; and as trustee under pension and profit-sharing trusts.

Those are the prime sources.

Q. They handle different types of corporate trust business, do they not?

A. Yes, sir.

Q. Do you know which banks in Lexington operate trust departments?

A. Well, the First Security; the Central—is it the Central?—and the Second National. I don't know about the Bank of Commerce. I think it does, but I am not positive of that.

Q. Do you know how long the banks in Lexington have been operating trust departments?

A. Well, some of them have been operating them since 1940, at least.

Q. Do you know of your own knowledge whether all the banks in Lexington have been actively competing for trust business?

[892] A. Well, we only have one customer, and I am afraid they haven't been competing for trust business.

Q. Do they have to be a customer of yours in order to be competing?

A. We can help.

Q. Who is your customer?

A. The Second National.

Q. Don't you think the First Security is competing for the trust business?

A. Sir?

Mr. WILLIAMS. Strike the question.

By Mr. WILLIAMS:

Q. Do you know, Mr. Sinclaire, at what approximate time the First National became active and aggressive in the trust field?

A. I really don't know, I am sorry to say.

Q. There has been testimony in this case that they became active and aggressive in about 1947.

Mr. ODEAR. 1940.

Mr. WILLIAMS. 1940; I am sorry.

By Mr. WILLIAMS:

Q. Do you know, Mr. Sinclaire, whether or not Security was for a period of time the only trust department in Lexington?

A. I understand that, sir, yes, sir.

[893] Q. In your judgment is there advantage competition-wise for a bank with a large commercial department in the trust field?

A. It has a certain advantage, yes.

Q. Do you think it is an advantage to a bank in competition to start off with a big trust department to build up its commercial department?

A. I think it helps.

Q. Mr. Sinclaire, isn't it true that only banks and trust companies advertise and hold themselves out for trust business?

A. As corporate entities, you mean?

Q. Yes.

A. Yes, sir.

Q. The individual widow who may happen to settle an estate for her husband is not in the market on a regular basis, is she?

A. No, sir.

Mr. WILLIAMS. That is all, sir.

Redirect examination by Mr. ODEAR:

Q. Lawyers handle quite a few estates, too, don't they?

A. Oh, yes, the lawyers do.

[894] The COURT. You are excused.

(Witness was excused.)

Mr. ODEAR. Your Honor, may we have about five minutes?

The COURT. We will be in recess for ten minutes.

(A ten-minute recess was taken.)

Mr. ODEAR. May it please the Court, this report of the Committee on Banking and Currency on the question of the Bank

Merger Act of 1960—a small portion of it was read into the record by the witness, Mr. Jennings, at the request of opposing counsel.

The whole thing has been filed in evidence. I wonder if I might read into the record at this time four short paragraphs from it?

The COURT. I have no objection to it.

Mr. ODEAH. I am now reading from page 20 of Exhibit No. 131.

"The Committee agreed that in the situations described by the witnesses and in similar situations, approval of the merger would be in the public interest, even though this would result in a substantial lessening of competition. In cases such as these, the benefits would be demonstrable. The merger would be a good merger and approval should be granted in spite of the lessening of competition.

"Since there was widespread agreement that some [895] mergers were in the public interest and should be approved, even though they might result in a substantial lessening of competition, the Committee concluded that the strict rule of the 1950 amendment of Section 7 of the Clayton Act was inappropriate to the field of banking.

"To adopt this rule for bank mergers might result in the disapproval of bank mergers, which all would agree were in the public interest. It might, on the other hand, as a result of the legislative history of the new provisions for banking, bring about a relaxed and modified interpretation of Section 7, which would be inappropriate in the case of ordinary unregulated industrial and commercial concerns where unrestricted competition is in the public interest.

"Either of these results would be undesirable. The Committee therefore concluded that it was preferable to handle bank mergers under rules specifically designed for the banking industry. The Committee concluded that the balanced approach set forth in S. 1062 was the most appropriate for the banking industry. The Committee noted the close resemblance to the test provided in Section 7 of the Interstate Commerce Act, and further noted that section provides an exemp-

tion from the Sherman Act as well as the Clayton Act, a provision not contained in S. 1062."

At this time we have one further deposition we [896] would like to read into the record.

Mr. LISLE. I would like to read the deposition of Willard L. Hurley.

(The following is the deposition of WILLARD L. HURLEY, taken in Atlanta, Georgia, January 29, 1962, before George J. Mitchell, Esq., and Melvin Spaeth, Esq., attorneys for the Plaintiff; and John L. Davis, Esq., and Gladney Harville, Esq., attorneys for the Defendants.)

WILLARD L. HURLEY being first duly sworn, deposed and testified as follows:

Direct examination by Mr. HARVILLE:

Q. State your name, please.

A. Willard L. Hurley.

Q. Where do you live, Mr. Hurley?

A. Birmingham, Alabama.

Q. What is your occupation or following at the moment?

A. I'm vice-president and trust officer of the Exchange Security Bank in Birmingham, Alabama.

Q. How long have you occupied that position?

A. Three and one-half years approximately.

Q. When did you start in that position?

A. September the 1st of 1958.

[897] Q. Were you associated with that bank in any capacity prior to that?

A. I was not.

Q. What was your occupation or calling prior to that?

A. I was national bank examiner working out of the Sixth Federal Reserve District assigned primarily to the examination of trust departments.

Q. And how long did you engage in that activity?

A. For eight years.

Q. Prior to that what did you do?

A. I was with the Trust Department of the First National Bank of Montgomery, Alabama.

Q. And how long did you do that?

A. Approximately three years, including two and a half years during college.

Q. What position did you occupy with the First National in Montgomery?

A. I had no official capacity. My work was largely in the clerical area.

Q. Tell us, if you will, the general nature of your duties as a national bank examiner of trust departments in the Sixth Federal Reserve District.

A. Our general area covered four main topics primarily in the examination of a bank's trust department, an appraisal [898] of the management of the trust department, the condition of the trust department as evidenced by its records and its procedural activity, the earnings of the trust department, and the future prospects of the department for growth in the trust field.

Q. Your examination of the trust departments in that capacity was restricted to national banks in the Sixth Federal Reserve District?

A. Yes, covering the Southeastern States.

Q. Give us some rough idea of the number of banks' trust departments that you examined per year let's say as an average.

A. An average of probably thirty to forty banks a year, depending entirely on the size of the trust department to which we were assigned.

Q. Concerning the matter of management as one of the elements that you considered in your examination of trust departments, did you find any differences in the attitude of management toward their trust departments in the various banks that you examined?

A. Insofar as the attitude toward the trust business, you very definitely could see some difference in those banks that were actively soliciting trust business and those that weren't. [899] We examined a number of small trust departments from time to time who were not actively engaged in trying to build a trust department. They were merely handling what trust business came to them through gravitation by their Board of Directors and close customers of the bank, and of course their attitude was entrely different from say the head of the Trust

Department of First National, who actually and actively solicits trust business.

Q. You mentioned the board of the Trust Department of First National. What are you referring to there?

A. First National Bank of Atlanta; Baxter Maddox I was referring to.

Q. Give us some general nature of your duties as trust officer of the Exchange Security Bank since you have been there.

A. Well, I am directly in charge of our trust department which involves, of course, a little bit of all types of work in a small trust department.

Q. Did your bank have a trust department at all prior to the time you went with the Exchange Security Bank?

A. We did not have an active trust department. We had no one handling the half dozen small paying agency accounts that they had when I went there.

Q. How many other commercial banks were there in Birmingham at the time you went there in September, 1958, was it?

[900] A. In September of '58, there were four commercial banks, although one of them is in the area actually not considered when we talk of banks because it has total resources of maybe 3 million and it's a two-man family operation. It's just not in the banking picture in Birmingham at all, nor do they seem to want to be.

Q. Is that four others other than your own bank?

A. That's correct.

Q. And that five includes this inactive bank that you speak of?

A. Yes, it does.

Q. How many of those commercial banks had trust departments at the time you went to Birmingham, Mr. Hurley?

A. Two of them actually had active trust departments, although the third had a little bit of trust business but did not hold themselves out to have a trust department particularly.

Q. What was the relative size of the Exchange Security Bank in terms of total resources as compared with the two other banks that had active trust departments in Birmingham at the time you went there?

A. Well, as of the end of 1958, total resources of Exchange Security Bank were $39,800,000. Total assets of Birmingham Trust National Bank were $146,800,000. The total [901] assets of First National Bank of Birmingham—I don't have the exact figures for '58, but they were in my recollection in the vicinity of $390 million to $400 million in total resources.

Q. So that the Birmingham Trust was roughly four times the size of your Exchange Security Bank and the First National was somewhere in the neighborhood of ten times the size?

A. Yes.

Q. Do you have any knowledge as to the size of the trust departments of those two banks? I am referring to the First National and the Birmingham Trust at the time you went with the Exchange Security Bank.

A. Yes, I did through having examined both of those trust departments for the Comptroller's Office in previous years. These figures are approximate because you don't carry that kind of figure around in your head; but First National was in the vicinity of $200 to $225 million in total trust assets.

Birmingham Trust was between $80 and $100 million in total trust assets—this being at the date of my last examination of either of those banks, which was in 1957.

Q. Tell us, if you will, the growth of your own trust department since you have gone there in terms of the total assets held by your bank in your trust department as of the year end since the time you have been there.

[902] A. As of year end 1958, we had cash of $184,500 and investments of $390,300. At the end of 1959 we had cash in the amount of $353,900 and investments of $803,500. As of the of 1960, we had cash $591,100 and investments $3,837,900. At the end of 1961, we had cash in the amount of $830,200 and investments in the amount of $11,102,400.

Q. So that in the year from 1960 to 1961, you almost trebled—well, you did treble—your total assets held in your trust department?

A. Yes, we did.

Q. During that period of time were you in active competition with the two large trust departments of the Birmingham Trust and the First National Bank?

A. We were.

Q. They haven't stopped soliciting business in Birmingham since you have gone there or slackened?

A. The First National Bank has three full-time trust solicitors plus one new business person who works at this particular task all the time in estate planning which is a part of new business solicitation.

The Birmingham Trust three years ago hired the associate dean of the University of Alabama Law School to head their trust new business department and he along with an assistant are actually, actively rather soliciting business in the city.

[903] Q. So that the growth that you have acquired has been acquired in the face of the competition furnished by these two large trust departments——

A. Yes, it has.

Q. In these three and a half years roughly?

A. Yes.

Q. Do you have any figures there concerning your gross earnings of your trust department as of year end during the period of your operation?

A. I do have those figures and by way of explanation would like to say that they are not particularly representative, since in the trust business particularly in Alabama on a fee for the administration of an estate it's customary not to take that fee until the termination of the estate. Oftentimes in a large estate this is three years or longer from the time you begin to act as executor.

[904] Q. So that——

A. So that a very small amount of our fees will be reflected in these totals.

Q. Give us, if you will, in the light of that the gross earnings of your trust department for the——

A. Year end 1958, 2300 gross; 1959, 5800 gross; 1960, 6500 gross; 1961, 11,300 gross. I have——

Q. In the light of what you have told us about the method of collecting fees and the period normally required to administer an estate, do you have any idea based upon your knowledge of the estates that you hold what your expected earnings would be in the year 1962 from that source?

A. The last estimate I made of earnings covered a three year period, 1962, 1963 and 1964, based on what business we then had on the books, and of course we have some business going on the books since then which is not included in this estimate.

Q. What are those estimates?

A. The estimate for 1962 was 40,000 gross. The estimate for 1963 is 50,000 gross.

Q. When you went there, how many employees were in the trust department at the Exchange Security Bank?

A. Just myself.

Q. How long did that continue?

[905] A. For approximately three months.

Q. Was someone added at that time?

A. A Secretary.

Q. How long did you and the secretary continue?

A. For about another four months beyond that.

Q. And what happened at that time?

A. At that time we hired a second secretary who was also bookkeeper and did general clerical work for us.

Q. How long did that continue with you and the two?

A. Approximately two years from the inception of the trust department at which time we hired an assistant trust officer.

Q. Do you have any more employees than that today?

A. We have since added one more clerk, so that our staff now is two officers and three clerks.

Q. I assume that as your department grew you found it necessary to hire additional employees to handle the——

A. Yes, we did. And we are in process of we are looking now for an assistant for the assistant trust officer and an additional stenographer. We are limited by space. Actually as soon as we have additional space, we will be hiring additional personnel.

Q. What are the total assets of your bank as of year-end 1961?

[906] A. $60,900,000 roughly.

Q. What are the total assets of the First National Bank of Birmingham as of year-end 1961?

A. $441,700,000.

Q. What are the total assets of the Birmingham Trust as of year-end 1961?

A. $174,754. Correction. $174,754,000.

Q. In your experience of three and a half years roughly of operation there, did you find that the size and terms of total resources of the two other large banks in Birmingham as well as the size of their trust departments was such that you were prohibited and were prevented from acquiring business and engaging effectively in the trust business in Birmingham?

A. I have not encountered any such difficulty. In fact, we have secured business from both of those banks, both active business and potential business, through taking from the other banks wills of our customers which had been lodged there previously which we now have naming us as executor and trustee. Of course, this would not reflect in our statement at this point, but it's in our potential business.

Q. Do you have any records or knowledge as to what your potential business is on your books now?

[907] A. We have 206 wills in our file, all of which name us in some capacity or other, some as executor, some as executor and trustee, some as trustee, and some as contingent trustee.

Q. And that is what you meant by potential business that you have been named in a will of somebody as a personal representative in some capacity or another?

A. That is true. As far as estimating the total value involved in those 206 wills, it is a guess at best, although I have guessed and have reported to my trust committee that we have in excess of 25 million potential business in those wills.

Q. In your efforts to acquire trust business, what has been your experience with respect to whether or not it is necessary or not to have the cooperation and assistance of the other commercial banking officers in your bank?

A. In my particular case and in my opinion, it is absolutely necessary to have the cooperation of the commercial officers of the bank due to the fact that we have no full-time solicitation. A lot of our business has come through the officers of our bank naturally, although a lot of it has come without reference to those officers.

Q. When you went to Birmingham to take over your duties as trust officer of the Exchange Security Bank, what